

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
WP (C) No. 2094/2025

Reserved on: 20.04.2026
Pronounced on: 29.04.2026
Uploaded on: 29.04.2026
Whether the operative part or full
judgment is pronounced: *FULL*

**1. Union Territory of J&K through
Commissioner/Secretary to Govt. Jal Shakti
(PHE) Department, Civil Sectt. J&K
Srinagar/Jammu.
Pin- 180001**

**2. Chief Engineer Jal Shakti (PHE)
Department, Srinagar Near Silk factory,
Rajbagh Srinagar
Pin-190008.**

**3. Superintending Engineer Hydraulic
Circle Kupwara H/Q Handwara, Near
Check post Braripora
Pin-193221.**

**4. Executive Engineer, Jal Shakti (PHE)
Department Special Sub-Division Tangdhar
Mini Secretariat, Tangdhar, Karnah.
Pin-193225.**

...Petitioner(s)/Appellant(s)

Through: Mr. Jehangir Ahmad Dar, GA with
Ms Shaila Shameem, AC

Vs.

**Mohd Yousuf Joo Age 58 years
S/o Lass Joo
R/o Tangdhar karnah, Kupwara
Pin 193225
and 58 other respondents**

...Respondent(s)

Through: Mr. M. A. Wani, Adv.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

J U D G M E N T

Per Sanjeev Kumar: J

1. The Union Territory of Jammu and Kashmir along-with three others seek to invoke the extraordinary writ jurisdiction vested in this court under

Article 226 of the Constitution of India to throw challenge to an order and judgment dated 23rd of April, 2025 passed by the Central Administrative Tribunal, Srinagar Bench, Srinagar, [“the Tribunal”] in OA No. 1016/2021 titled Mohammad Yousuf Joo and Ors. vs. Union Territory of Jammu and Kashmir and Ors. whereby, the Tribunal has allowed the OA filed by the respondents herein and has directed the petitioners not to withdraw the benefits of SRO 59 of 1990 or make recoveries.

2. Before we advert to the grounds of challenge urged by Mr. Jehangir Dar, learned GA appearing for the appellants, we deem it appropriate to narrate few facts as are relevant to the disposal of this petition.

3. The respondents are the employees of Public Health Engineering, [“PHE Department”] of the Union Territory of Jammu and Kashmir working as Assistant Lineman. Some of the respondents have retired, whereas others are still in service. Vide SRO 59 of 1990 issued by the Government, it was decided to rationalize pay scales of various posts in the PHE Department, including those held by the respondents. This SRO was not given effect to for pretty long time.

4. It was in the year 2016, the Chief Engineer, Jal Shakti, PHE Department, vide order No. PHE/Estt-16854-55 dated 21st of November, 2016 directed the subordinate officers to implement SRO 59 of 1990 and give the benefit of higher pay scales to the eligible employees, including the respondents herein.

5. Acting upon the instructions of the Chief Engineer, the subordinate offices issued orders on 21st of September, 2017 and 25th of September, 2017 extending the benefit of SRO 59 of 1990 retrospectively to the respondents with effect from 01.04.1994. Later on, as it appears, the matter

came to the notice of Director Finance, PHE, (I&FC Department) in the year 2019, who vide its communication No. PW/Hyd/Acctts/Up-grade/41/2018 dated 29th of January, 2019 found the benefit of SRO 59 erroneously extended to the respondents, that too, by the incompetent authority and accordingly, directed the recovery of benefits granted to the respondents. This withdrawal of benefit of SRO 59 lead to filing of SWP No. 255/2019 by All Kashmir PHE Employees Federation, in which this Court vide its order dated 13.02.2019 stayed the recoveries. It is pleaded that notwithstanding the stay of recoveries passed by this Court on 13.02.2019, the petitioners issued a communication bearing No. 18-19 dated 03.04.2021 and a Circular bearing No. A/Codes/Pension/2020-166 dated 11.02.2021 and initiated the process of recovery of the benefits erroneously released in favour of the respondents.

6. Feeling aggrieved, the respondents filed OA No. 1016/2021 seeking *inter alia* the following reliefs:

- (1) quashing the Communication No. 18-19 dated 3rd of April, 2021.
- (2) quashing the circular bearing No. A/Codes/Pension/2020-166 dated 11.02.2021 issued by the Commissioner Secretary to the Government, Department of Finance.
- (3) restraining the petitioners herein from making a recovery of the benefits granted to the respondents under SRO 59 of 1990 from the salaries of the respondents.
- (4) directing the petitioners to continue to pay the revised pay scale to the respondents as has been fixed in terms of SRO 59 of 1990 and as reflected in the service books.

7. In the writ petition, the writ petitioners did not lay specific claim on their entitlement to the benefits under SRO 59 of 1990, but claimed that the amount though erroneously paid under the said SRO could not be recovered in view of the law laid down by the Apex Court in the case of **State of Punjab and Ors. vs. Rafiq Masih and Ors**, reported as **2015 (4) SCC 334**.

8. The writ petition was contested by the respondents, who in their reply affidavit, disputed the entitlement of the respondents to the benefit of SRO 59 of 1990, granted in the year 2017, that too, retrospectively w.e.f. 1st of April 1994. It was pleaded by the petitioners that the benefit of SRO 59 of 1990 was extended to the respondents erroneously and by an incompetent authority and, therefore, nothing would stop the petitioners to take corrective measures and withdraw the benefit erroneously granted. The petitioners also justified the recoveries by submitting that nobody particular an employee cannot be permitted to reap the benefits of a wrong committed by its employee inadvertently.

9. The Tribunal, having considered the matter at length, came to the conclusion that the respondents may not be entitled to be extended the benefit of SRO 59 of 1990, but the fact remains that this benefit was given to them by the petitioners of their own without there being any concealment or fraud practiced by the respondents to obtain such benefit, and, therefore, in view of the law laid down in **Rafiq Masih** (supra), the recovery of the amount erroneously paid to the Class IV employees, was not permissible. The Tribunal without giving any further reasoning also restrained the petitioners herein to correct the mistake and directed the continuation of the benefit of SRO 59 of 1990 granted to the respondents. This is how OA was allowed by the Tribunal in terms of the judgment impugned.

10. Having heard learned counsels for the parties and perused the material on record, we find that there is no serious contest between the parties on facts.

11. Indisputably, all the respondents who filed OA before the Tribunal are Class IV employees working as Assistant Lineman/Work Supervisor. Recoveries of the amount erroneously paid to them under SRO 59 of 1990 in the year 2017 were initiated when most of the respondents had retired on superannuation. In other cases also, the benefit was extended on 21st of September, 2017 / 25th of September 2017 and the same was withdrawn on 3rd of April, 2021 i.e., after about four years.

12. The respondents did not contest the contention of the petitioners that the benefit of SRO 59 of 1990 which was granted to them in the year 2017 w.e.f 1st of April, 1994 was erroneously granted, that too, by the incompetent authority. There is thus no adjudication by the Tribunal as to whether the benefit of SRO 59 of 1990 was rightly extended to the respondents or not, and rightly so, as this was not the bone of contention between the parties before the Tribunal.

13. A short grievance that was projected in the OA and later emphasized during the course of arguments on behalf of the respondents was that in view of the law laid down by the Hon'ble Supreme Court in **Rafiq Masih**, the recovery of the amount, may be, erroneously paid was not permissible. In the given admitted fact situation, we need to give a quick look to the case law on the subject.

14. In **Rafiq Masih** (supra), the case before the Hon'ble Supreme Court was in respect of employees belonging to Class III and Class IV service who had been extended the monetary benefits in excess of their entitlement and

these benefits had flown to them consequent upon a mistake committed by the competent authority of the employer in determining the emoluments payable to them. It was found that the employees were not guilty of furnishing any incorrect information which had led to the concerned competent authority to commit the mistake of making the higher payment to these employees. The payment of higher dues to the employees was also not on account of any misrepresentation made or fraud committed by them. The Hon'ble Supreme Court thus considered the issue as to whether such employees against whom an order of recovery of the excess amount had been paid should be exempted in law from the reimbursement of the same to the employer. The Hon'ble Supreme Court having surveyed the entire case law on the subject, in particular, the decisions in the case of **Syed Abdul Qadir vs State of Bihar, (2009) 3 SCC 475** and **Shyam Babu Verma vs. Union of India (1994) 2 SCC 521** and **Col. B. J. Akkara (Retd) vs. Government of India (2006) 11 SCC 709** summarized its conclusions in paragraph 12 which reads thus:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

15. This judgment rendered by the Supreme Court serves as a locus classicus on the subject, though it has also been interpreted in the later judgments in the context of fact situations presented in different cases. Just before the judgment of the Supreme Court in **Rafiq Masih**, the issue was considered by the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors** reported as (2012) 8 SCC 417. In **Chandi Prasad Uniyal**, the Hon'ble Supreme Court was considering a question as to whether overpayment of amount due to wrong fixation of 5th and 6th Pay Scales of Teachers/Principals based on the 5th Pay Commission Report could be recovered from the recipients who were serving as Teachers.

16. After considering the case law on the subject, the Hon'ble Supreme Court was of the view that the Supreme Court had not laid down any principle of law that only if there is a misrepresentation or fraud on the part of the recipient of the money in getting the excess pay, the amount paid due to wrong fixation of pay, be recovered. The judgments rendered in **Syed Abdul Qadir** and **Shyam Babu Verma** as also **Col. B. J. Akkara** were relied upon by the Hon'ble Supreme Court. What was held by the Hon'ble Supreme Court in para 15, 16 and 17 of the judgment reads thus:

“15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the

payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered”.

17. The aforesaid view has been affirmed by the Hon'ble Supreme Court in a later judgment rendered in **Thomas Daniel vs State of Kerala and Ors., 2022 Live Law (SC) 438**. The law laid down by the Supreme Court in the case of **Rafiq Masih and Thomas Daniel**, has been relied upon by this Court in a number of judgments and the recoveries from Class IV employees, who had been paid the higher wages erroneously, on retirement or at the verge of their retirement have been quashed. This Court has, however, permitted the employers to correct the mistake committed for future. One such judgment is rendered in the case of **Union Territory of JK & Ors. vs. Deshbir Singh & Anr.** decided on 22nd of September 2023. An SLP preferred there against has been dismissed by the Hon'ble Supreme Court.

18. Be that as it may, the situations culled out in para 12 of the **Rafiq Masih** is a guiding light to decide such cases where recoveries are sought to be effected from employees belonging to Class III and Class IV service on

the ground that they had received the benefits of higher pay scale erroneously.

19. When we examine the case of the respondents herein, in the light of trite law, we find that they are the employees who belong to Class III or Class IV service of Jal Shakti Department. They were granted the benefit of SRO 59 of 1990, may be, erroneously by the petitioners in the year 2017 retrospectively with effect from 1st of April 1994.

20. The respondents were neither privy to nor had been instrumental in getting the aforesaid erroneous benefit. There is no allegation against the respondents of having misrepresented or committed fraud for obtaining the said benefit. The respondents enjoyed that benefit for four years, and then, suddenly, the petitioners realized that the benefit of SRO 59 had been wrongly released in favour of the respondents by the incompetent officers. They initiated process for withdrawing the benefit and effecting recoveries. By the time the recoveries were initiated, most of the respondents stood retired, though many of them were still in service. Be that as it is, the instant case would squarely fall in Clause (i) of para 12 of **Rafiq Masih** which clearly lays down that recoveries by the employer would not be permissible from the employees belonging to Class III and Class IV (or Group 'C' or Group 'D' service).

21. We are however not in agreement with the Tribunal that notwithstanding that the benefit of SR 59 of 1990 was erroneously extended, the respondent would be entitled to reap the benefit of wrong for future as well. Once it is conceded that the grant of benefit of SR 59 of 1990 was a mistake committed by the officers of the petitioners, nothing prevents the

petitioners to take corrective measures and undo the wrong. There could be no countenance of the contention that once a mistake is always a mistake and that the mistake once committed, though bonafide, is irreversible.

22. The petitioners did nothing wrong when they corrected their mistake which was pointed out to them by the Director of Finance concerned. However, in view of the legal position adumbrated hereinabove the recovery of the amount already paid to the respondents on account of wrong extending of the benefit of SR 59 of 1990 was not permissible. The respondents are small time employees getting a meagre salary. Whatever was paid to them as additional pay on account of extending the benefit of SR 59 of 1990 was spent by them by adjusting their lifestyle. It would be too harsh to them if this benefit is suddenly withdrawn either from the pensionary benefits (in case of retirees) or from the salaries (in case of respondents in service). This may not hold true in case of employees holding higher positions in the non-Gazetted cadre or the officers in the Gazetted cadre.

23. Having regard to the status of Class III and Class IV employees and the amount of salary they receive, the Supreme Court has carved out an exception in their favour and that is clearly stated in clause (i) of para 12 of **Rafiq Masih**.

24. In view of the aforesaid, the judgment passed by the Tribunal deserves to be upheld in so far as the recoveries from the respondents are concerned, but needs to be modified to the extent it prevents the petitioners from correcting the mistake for future and refixing the salary and pension of the respondents. **Ordered accordingly.**

25. The petitioners shall be well within their right to correct the mistake and refix the salary or pensionary benefits as the case may be, by withdrawing the benefit of SRO 59 erroneously extended to the respondents.

26. With the aforesaid modification, the judgment impugned is upheld and this petition disposed of, accordingly.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
29.04.2026
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