

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT JAMMU**

WP(C) No. 1376/2025

Pronounced on:- 14.10.2025

Uploaded on:- 16.10.2025

1. UT of J&K through Commissioner .....Appellant(s)/Petitioner(s)  
Secretary to Govt. Jal Shakti (PHE)  
Deptt. Civil Secretariat J&K at  
Jammu, Civil Secretariat J&K at  
Jammu.
2. Chief Engineer, Jal Shakti (PHE)  
Deptt. Jammu-180001.
3. Executive Engineer, Jal Shakti (PHE)  
Rural Division Jammu

Through: Ms. Monika Kohli, Sr. AAG

vs

Parveen Singh S/o Karan Singh  
R/o Village Prithvipur, Tehsil Bishnah  
District Jammu

..... Respondent(s)

Through:

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

**ORDER (ORAL)**

**14.10.2025**

**Sanjeev Kumar 'J'**

1. Notice sent to the respondent through registered post on 13.06.2025 has not been received back served or un-served. Statutory period has expired.
2. Since nobody has turned up to cause appearance on behalf of the respondent, as such, the respondent is set *ex-parte*.
3. This petition under Article 226 of the Constitution of India, filed by the Union Territory of J&K & Ors. is directed against an order and

judgment dated 18.09.2024 passed by the Central Administrative Tribunal, Jammu Bench at Jammu [“the Tribunal”] in O.A. No. 1284/2021 titled *Parveen Singh Vs. UT of J&K & Ors* .whereby the Tribunal, has, while allowing the O.A., issued the following directions:

- (i) The impugned order of recovery qua the applicants is quashed and set aside and the respondents are directed not to recover any amount from the salary or pensionary benefits of the applicants.
- (ii) The respondents are directed to restore the pay/pension of the applicants which they were getting prior to the issuance of the impugned order.
- (iii) The amount recovered from the salary/pensionary benefits of the applicants, shall be refunded preferably within two months from the date of receipt of a certified copy of this order.
- (iv) In the matters, where applicant stood already retired, the respondents shall pay pension to the applicants on the basis of pay, which they were getting before the issuance of impugned order.

4. The issue raised in this petition by the UT of J&K is squarely covered by a judgment passed in WP (C) No. 2416/2024 c/w WP (C) No. 3034/2024 titled *Sita Ram and Ors. vs. UT of J&K and Ors.* and *Karan Kumar vs. UT of J&K and Ors.* respectively decided by a Division Bench of this Court on 04.04.2025. What is held by the Division Bench in paragraph Nos. 12, 13 and 14 is set out below:

**12.** *The short case that was projected by the petitioners before the Tribunal was that they were nearing their retirement and, therefore, it would be too inequitable*

*and harsh if the respondents were permitted to make recoveries from their pay or pension/gratuity. The Tribunal accepted the plea of the petitioners, though all of them were in service when the OA was filed. However, some of them had retired, while others were nearing their superannuation at the time of disposal of the OA. Placing reliance on the judgment passed by the Supreme Court in Rafiq Masih's case (supra), the Tribunal allowed the OA and directed the respondents not to make any recoveries on account of the excess payments erroneously drawn by the petitioners under the orders of respondent no. 4. The Tribunal rightly did not restrain the respondents from re-fixing the salary of the petitioners after withdrawing the benefit of higher pay scale given to the petitioners erroneously. Once a mistake is always a mistake is not the principle that should be applied in such cases. No employee, including one nearing his superannuation, is entitled to reap the benefit of an error committed by the employer while fixing the pay scale. As already stated, the petitioners never claimed before the Tribunal that they were entitled to the benefit of higher pay scale extended to them by the respondent No.4 or that SRO 59 of 1909 (supra) could not have been arbitrarily withdrawn by the respondents. Neither, any such pleadings are available in the OA of the petitioners, nor has such a question fallen for determination before the Tribunal. In the absence of a challenge to the withdrawal of SRO 59 of 1990 and in the absence of a claim that the petitioners were entitled to a higher pay scale under SRO 59 of 1990, the only question that was required to be determined by the Tribunal was as to whether the benefit of the higher pay grade already availed of the petitioners could be withdrawn by the respondents, that*

*too, at the fag end of their careers. This question has been answered by the Tribunal in their favour.*

- 13. The plea of Mr. Bakshi, learned counsel for the petitioners, that since the mistake of granting higher pay scale was committed by the respondents and not by the petitioners, and, therefore the benefit of such a mistake should be allowed to be availed by the petitioners, does not have any substance and, therefore, cannot be accepted. During the course of employment, many a times, bona fide mistakes in granting pay scales, or fixing salaries are committed by the employers. Sometimes, these mistakes are detected by the employers themselves and sometimes by the office of Accountant General. There is nothing that prevents the employer from correcting such mistakes. However, in a case where the employee resists such correction, it is incumbent upon the employer to provide such employee an opportunity of being heard.*
- 14. In the instant case, as we have pointed out earlier, the petitioners never disputed that the benefit which was given to them was under a mistake of fact and was, therefore, capable of being corrected by the respondents. The entire emphasis of the petitioners in the OA was to prevent the respondents from recovering the benefits already availed of. The Tribunal accepted their plea and granted the relief aforesaid. However, the claim of the petitioners to avail the benefit of a mistake of fact despite the mistake having been detected and corrected, is totally misconceived and, therefore, rightly not accepted by the Tribunal. We, therefore, find no fault with the judgment impugned passed by the Tribunal.*

5. In view of the aforesaid judgment passed by the Division Bench of this Court, it is now well settled that no employee, including the one who has retired on superannuation, is entitled to reap the benefit of error committed by the employer while fixing the pay scale. However, in view of the law laid down by the Supreme Court in the case of *State of Punjab and Ors. Vs. Rafiq Masih (White Washer); (2015) 4 SCC 334*, the salary paid on account of erroneous fixation cannot be recovered from a lower rung employee, that too, after his superannuation.
6. We have gone through the O.A. filed by the respondent before the Tribunal and clearly found that the respondent has not disputed that the benefit, which was given to him by the petitioners, was under a mistake of fact and if that be the position, the error, if any, committed by the employer, was liable to be corrected at any stage. The entire petition, which was filed before the Tribunal, was premised on the law laid down by the Hon'ble Supreme Court in Rafiq Masih's case (supra) and a prayer was made to issue a mandamus to the petitioners herein not to recover the amount paid erroneously under a wrong fixation of the salary.
7. The plea has been accepted by the Tribunal and the petitioners have been called upon not to recover any amount which has been received by the respondent on account of an error of wrong fixation of salary committed by the petitioners.
8. The Tribunal has, however, erroneously issued a mandamus to the petitioners not to correct the mistake and re-fix the salary as per rules.

9. Be that as it may, since the issue is fully covered by our judgment rendered in Sita Ram's case (supra) and therefore, we need not delve more into the discussion on the issue.
10. This petition is, accordingly, partially allowed and the judgment impugned is set aside only to the extent of direction Nos. (ii) and (iv) insofar as it directs to restore the pay/pension of the respondent, which he was getting prior to the issuance of the order impugned in the O.A. Rest of the judgment of the Tribunal is, however, maintained.
11. **Disposed of.**

**Jammu**  
14.10.2025  
Vishal Sharma

