HIGH COURT OF JAMMU &KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 20.04.2026
Pronounced on:08.05.2026
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Whether the operative part or full judgment is pronounced: ***Full***

WP(C) No.1208/2024

SHAKEEL AHMAD WANI ...PETITIONER(S)/APPELLANT

Through: - Mr. Syed Wasiq, Advocate.

Vs.

UT OF J&K AND OTHERS ...RESPONDENT(S)

Through: - Mr. Ilyas Laway, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order No.DULB/Acctts/3317/166 of 2024 dated 18.04.2024, issued by respondent No.2, whereby his re-designation/upgradation as Tax Collector from the pay scale of Rs.750-940/ to the pay scale of Rs.4000-6000/ granted vide Order No.DLB/Estt/2487/200 of 2003 dated 27.05.2003 has been rescinded and his further promotion from the post of Tax Collector to the post of Tax Inspector in the pay scale of Rs.5000-8000/ made vide order No.DULB/Estt/700 of 2010 dated 14.10.2010, has also been rescinded *ab initio*. The impugned order, while according sanction to the 1st and 2nd in-situ promotion to the petitioner, seeks adjustment of excess pay drawn by the petitioner with recovery of balance excess pay from his DCRG emoluments.

2) It appears that the petitioner was initially appointed as Sanitary Inspector in the pay scale of Rs.750-940 on temporary basis vide order No.NAC/D-V/97-98/496-497 dated 26.12.1997. The petitioner was upgraded/re-designated as Tax Collector in the pay scale of Rs.4000-6000/ against the available post in terms of order No.DLB/Estt/2487/200 of 2003 dated 27.05.2003 issued by respondent No.2. Thereafter, in terms of order No.DULB/Estt/700 of 2010 dated 14.10.2010, issued by respondent No.2, the petitioner was promoted to the post of Tax Inspector in the pay scale of Rs.5000-8000/ pending clearance by the DPC.

3) It has been submitted that, on superannuation of the petitioner from service on 30.04.2023, respondent No.4 submitted his pension case for pension authorization vide communication dated 17.05.2023 to respondent No.2 and while processing pension case of the petitioner, respondent No.4 was instructed to clear some deficiencies in respect of the petitioner's case including implementation of circular instructions regarding unauthorized upgradations in the context of upgradation of petitioner from the pay scale of Rs.750-940 to the pay scale of Rs.4000-6000. In response thereto, in his reply to respondent No.2, respondent No.4 vide communication dated 16.10.2023 communicated that re-designation/upgradation of the petitioner as Tax Collector was made pursuant to order dated 27.05.2003 issued by respondent No.2. However, despite receiving the aforesaid clarification, the respondents issued the impugned order.

4) The petitioner has challenged the impugned order on the grounds that the same is ultra vires the powers of respondent No.1, inasmuch as order regarding recovery of the excess amount drawn by the petitioner after a lapse of one year from the date of his retirement cannot be issued. It has been contended that the recovery from the emoluments, being a major penalty, cannot be effected/imposed, that too without conducting a departmental enquiry. It has been further contended that the benefit of upgradation/re-designation as Tax Collector has not been extended to the petitioner on account of any fraud, misrepresentation or mischief attributable to him. It has been contended that, after being redesignated as Tax Collector, the petitioner discharged his duties at the redesignated post for a period of seven years till he was promoted to the post of Tax Inspector in the year 2010 and the petitioner having discharged his duties against the redesignated post for a period exceeding five years, the emoluments drawn for the services rendered at the redesignated post cannot be recovered by the respondents in terms of impugned order. It has been contended that the impugned order is an outcome of illegal exercise of authority.

5) The respondent No.3, in its reply to the writ petition, has submitted that respondent No.2 has not forwarded case of the petitioner to him for settlement of pension case for the reason that respondent No.2 considers the promotions/upgradations of the petitioner as disputed/illegal. It has been submitted that respondent No.3 is mandated to authorize pension and other pensionary benefits in favour of the employees of the Urban Local Bodies of Kashmir Division as and when the same is received from the Pension Sanctioning Authority viz. respondent No.2, who, till date, has not forwarded the pension case of the petitioner.

6) Respondent No.5, in his reply to the writ petition has contended that the petitioner through deceitful and illegal means, in connivance with the then officers/Administrator, has managed to get appointment and promotion in violation of rules and that he has managed to construct the service book by getting suspicious entries made therein. It has been contended that the petitioner managed to re-designate/up-grade himself directly in the pay scale of Rs.4000-6000 in terms of order dated 27.05.2003 without ascertaining the eligibility and following the proper procedure under rules. It has been contended that if an appointment/promotion is made without following the relevant rules, the service rendered in pursuance of such illegal appointment or promotion cannot be equated to service rendered in pursuance of an appointment or promotion validly and lawfully made. It has been contended that the illegal benefits given to the petitioner have been reviewed and, in this regard, orders issued contrary to law and rules have been rescinded in terms of the impugned order.

7) Heard and considered.

8) The question which is required to be determined in this case is as to whether the respondents are legally justified in effecting recovery from the pension and pensionary dues of the petitioner after he has retired from service. The Supreme Court has in, the case of **State of Punjab & Ors vs. Rafiq Masih (White Washer),** AIR 2015

SC 696, while dealing with the aforesaid issue, summarized the situations wherein recovery by the employer would be impermissible in law. The situations enumerated by the Supreme Court are as under:

> *(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.*

9) In view of the aforesaid legal position laid down by the Supreme Court, it is clear that recovery of the excess amount drawn by an employee, who has already retired from service, is impermissible in law.

10) Admittedly, the petitioner has superannuated from service on 30.04.2023 whereas the impugned order of recovery has been issued on 18.04.2024. Therefore, so far as the recovery of excess pay drawn by the petitioner on account of his alleged illegal re-designation/upgradation to the post of Tax Collector made in terms of order dated

27.05.2003 and his promotion to the post of Tax Inspector made vide order dated 14.10.2010 cannot be effected against him, particularly when there is nothing on record to show that the petitioner connived with the concerned officers at the time when he was upgraded/redesignated as Tax Collector or when he was promoted to the post of Tax Inspector.

<u>11)</u> So far as fixation of pension of the petitioner is concerned, the respondents seek to refix his pension on the ground that his promotion to the post of Tax Inspector was pending clearance of the DPC. Admittedly, the DPC was not held and, as such, the placement of the petitioner in the higher grade was not confirmed by the DPC. Hence, the petitioner is not entitled to fixation of his pension in the grade of Tax Inspector as he was never confirmed on that post. Thus, while the respondents cannot recover the excess salary received by the petitioner while working in the grade of Tax Inspector but they are well within their rights to refix the pension of the petitioner by ignoring his placement in the pay scale of Rs.5000-8000 attached to the post of Tax Inspector as the same was never cleared by the DPC.

<u>12)</u> For what has been discussed hereinbefore, the writ petition is partly ***allowed*** and impugned order dated

18.04.2024, to the extent it seeks to recover the excess emoluments drawn by the petitioner, is set aside, leaving it open to the respondents to refix pension of the petitioner in the light of the observations made hereinbefore.

(Sanjay Dhar)
Judge

SRINAGAR
08.05.2026
"Bhat Altaf-Secy"

Whether the **judgment** is reportable: **YES/NO**