



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

*Reserved on: 28.04.2026*

*Pronounced on: 08.05.2026*

*Uploaded on: 08.05.2026*

*Whether the operative part or  
full judgment is pronounced:  
**Full***

**WP(C) No.2142/2025**

**ABDUL QAYOOM SHEIKH ...PETITIONER(S)/APPELLANT**

*Through: - Mr. M. A. Beigh, 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/524 of 2024 dated 09.07.2024, issued by respondent No.2, whereby his re-designation/upgradation as Building/Sanitation Assistant in the pay scale of Rs.775/1025 (pre-revised) made vide Order No.NAC/KH/95/201-02 dated 30.04.1995 in Notified Area Committee, Khrew, has been rescinded *ab initio* and his placement in the pay scale of Rs.5700-10100/ pending clearance by the DPC made vide order No.DULB/Estt/695 of 2010 dated 14.10.2010, has also been rescinded *ab initio*. The impugned order, while according post facto sanction to the 1<sup>st</sup> and 2<sup>nd</sup> 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 Dharat Mahaldar on daily wage basis in Notified Area Committee, Khrew, vide order No.NAC/K/86 of 506-07 dated 02.10.1986 and subsequently his services were regularized in the pay scale of Rs.345-460 in terms of order No.NAC/K-87/4 of 1987 dated 30.03.1987. Thereafter, in terms of order No.NAC/KH/95/201-02 dated 30.04.1995, the petitioner was designated as Building/Sanitation Assistant in the pay scale of Rs.775-1025(PR). Vide order No.312/DULB of 2003 dated 27.06.2003, issued by respondent No.2, the petitioner was promoted as Sanitary Inspector in the pay scale of Rs.4000-6000 (pre-revised) with effect from 01.07.1997. In terms of order dated 07.05.2007, the petitioner was granted 1<sup>st</sup> step in-situ promotion from the pay scale of Rs.4000-6000 to the pay scale of Rs.4500-7000(pre-revised) with effect from 01.08.2006 under SRO 14 dated 15.01.1996.

3) It has been submitted that the petitioner was placed in the pay scale of Rs.5700-10100 attached to the post of Sanitary Inspector in terms of order No.DULB/Estt/695 of 2010 dated 14.10.2010, pending clearance by the Departmental Promotion Committee.



4) It has been submitted that, at the time of superannuation of the petitioner from service on 30.04.2025, he was working on the post of Sanitary Inspector. It has been further submitted that the petitioner was placed in the pay scale of Rs.5700-10100 attached to the post of Sanitary Inspector pending clearance by the DPC in terms of the order issued by respondent No.2 but his case was never placed before the DPC. It has been contended that respondent No.2 has not chosen to place the case of the petitioner before the DPC despite the fact that the said respondent is himself chairman of the DPC and instead of doing so, respondent No.2 has issued the impugned order, that too after the retirement of the petitioner.

5) 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 more than two months 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 re-designation as Building/Sanitation Assistant and his placement in the pay scale of Rs.5700-



10100 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 Building/Sanitation Assistant, the petitioner discharged his duties at the redesignated post for a period of eight years till he was promoted to the post of Sanitary Inspector in the year 2003 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.

6) The respondents, in their reply to the writ petition, have submitted that without seeking recommendations of the DPC, the petitioner has been illegally promoted in the pay scale of Rs.4000-6000 on pick and choose basis and on the basis of illegal upgradation, the petitioner got first step in-situ promotion in the pay scale of Rs.4000-6000. It has been contended that on examination of pension case of the petitioner, it was found that the re-designation order dated 30.04.1995 was issued by an incompetent authority and the order regarding placement of the petitioner in the pay scale attached to the post of Sanitary Inspector has been issued without the recommendation of the DPC. According to the



respondents, illegal benefits given to the petitioner have been reviewed, whereafter 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.

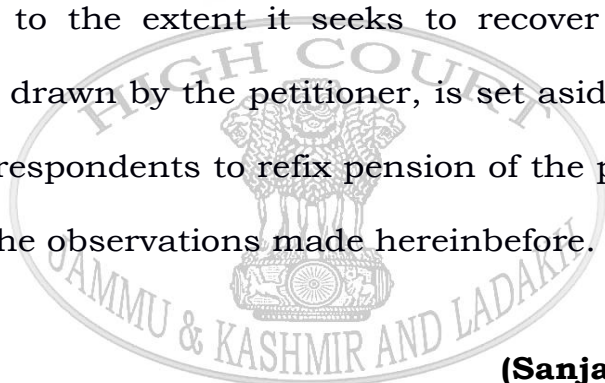
10) Admittedly, the petitioner has superannuated from service on 30.04.2025 whereas the impugned order of recovery has been issued on 09.07.2025. Therefore, so far as the recovery of excess pay drawn by the petitioner on account of his alleged illegal re-designation as Building/Sanitation Assistant made vide order dated 30.04.1995 and his placement in the pay scale of Rs.5700-10100 made in terms of 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 redesignated as Building/Sanitation Assistant or when he was placed in the pay scale attached to the post of Sanitary Inspector.

11) So far as fixation of pension of the petitioner is concerned, the respondents seek to refix his pension on the ground that his placement in the pay scale of Rs.5700-10100 attached to the post of Sanitary Inspector in terms of order dated 14.10.2010 (supra) 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 Sanitary 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 Sanitary 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.5700-10100 as the same was never cleared by the DPC.

**12)** For what has been discussed hereinbefore, the writ petition is partly **allowed** and impugned order dated 09.07.2025, 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-Secretary"

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