

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

**WP(C) No. 3189/2025
CM 8584/2025**

**1.Union Territory of J&K through
Commr/Secretary to Govt. Public
Engineering (PHE) Department
Civil Sectt. Srinagar.**

**2.Chief Engineer (Jal Shakti) Public
Health Engineering Department
Kashmir.**

**3.Executive Engineer (Jal Shakti)
Ferozpora Basin Irrigation Division
Tangmarg**

...Petitioner(s)

Through: Mr. Jahingeer Ahmad Dar, GA

Vs.

**1. Bashir Ahmad Tantray
S/O: Abdul Razak Tantray
R/O: Shirpora Bangil Pattan
Teshil & District Baramulla**

**2. Principal Accountant General
(A&E) J&K Srinagar, th. Its Sr.
Accounts Officer, PNR-1.**

...Respondent(s)

**Through: Mr. L.A. Latief, Advocate for R-1.
Mr. Irshad Ahmad, Advocate for R-2.**

CORAM:

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

ORDER (ORAL)

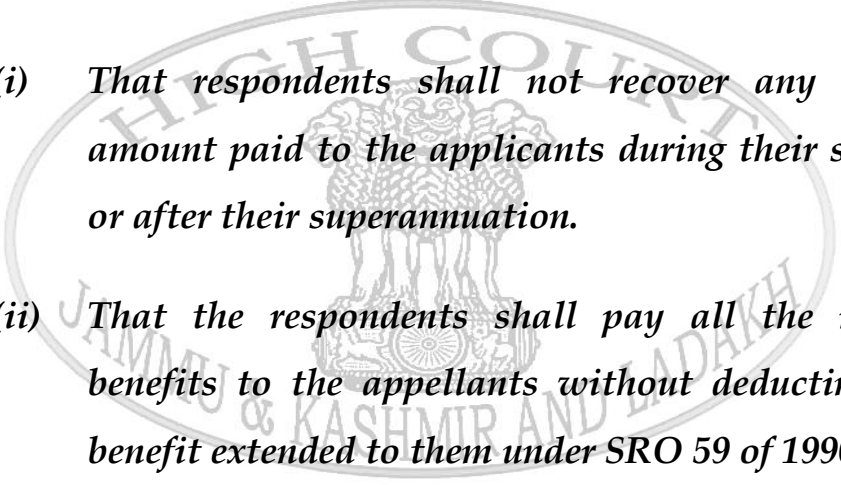
06.05.2026

Per: Sanjeev Kumar-J:

01. Impugned in this petition filed by the Union Territory of J&K and two others invoking Article 226 of the Constitution of India is an order and judgment dated 03.03.2025, passed by the

Central Administrative Tribunal, Srinagar Bench, [“the Tribunal”] in OA No. 160 of 2025 titled *“Bashir Ahmad Tantray Vs. Union Territory of J&K and Ors.”* whereby the Tribunal has allowed the OA filed by the respondent No. 1 herein and directed the petitioners herein to release the retrial/pensionary benefits in accordance with Rules, particularly in the light of the order dated 27.09.2023 passed in OA No. 592/ 2023 titled *“Mehraj-ud-Din and Ors. Vs. Union Territory of J&K and Ors.”* and OA No. 117 of 2024 titled *“Ghulam Ahmad Malla Vs. Union Territory of J&K and Ors.”* decided on 12.02.2025.

02. In essence, the Tribunal allowed the OA by issuing the following directions:-

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- (i) *That respondents shall not recover any excess amount paid to the applicants during their service or after their superannuation.*
 - (ii) *That the respondents shall pay all the retiral benefits to the appellants without deducting the benefit extended to them under SRO 59 of 1990.*

03. The impugned judgment has been challenged by the petitioners primarily on the ground that the Tribunal failed to appreciate that the benefit of SRO 59 of 1990 has been extended to the respondent No. 1 erroneously that too at a time when the said SRO already stood repealed.

04. It is submitted that the respondent No. 1 herein having been granted benefit of two in-situ promotions in terms of SRO

14 of 1996, was otherwise not entitled to the up-gradations envisaged under SRO 59 of 1990. It is thus argued by Mr. Jahingeer Ahmad Dar, learned Government Advocate appearing for the petitioners, that the petitioners committed no illegality in correcting the mistake and ordering recovery of the excess amount.

05. *Per contra*, Mr. L.A. Latief, learned counsel appearing for the respondent No. 1, would argue that the respondent No. 1 was entitled to the benefit of SRO 59 of 1990, which of course was granted to him belatedly. He would submit that even if it is assumed that the benefit of SRO 59 of 1990 was wrongly extended to the respondent No. 1 yet no recovery can be made from him after his superannuation in view of the law laid down by the Hon'ble Supreme Court in the case titled "*State of Punjab and Ors. Vs. Rafiq Masih*", (2015)4 SCC 334.

06. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the issue involved in this petition for determination is no longer *res-integra*. This Court has already considered this issue in numerous cases and has categorically held that though the recoveries from Class-III and Class-IV employees on account of wrongful benefits derived by them during their service or after their superannuation may not be permissible in view of the law laid down by the Hon'ble Supreme Court in *Rafiq Masih's*,

yet there is nothing that comes in the way of the employer to correct the wrong and re-fix the pay or pension after correcting such wrong.

07. The judgment passed by this Court on 4th April, 2025 in WP(C) No. 2416/2024 titled *“Sita Ram and Ors. Vs. Union Territory of J&K and Ors.”* and the judgment passed by this Court in a batch of petitions with the lead case being WP(C) No. 936/2025 titled *“Union Territory of J&K and Ors. Vs. Maqbool Sheikh”* decided on 6th March, 2026 has settled the position beyond a shadow of discussion.

08. In view of the aforesaid, the judgment passed by the Tribunal deserves to be upheld insofar as the recovery from the respondent No. 1 is concerned but needs to be modified to the extent it prevents the petitioners herein from correcting the mistake for future and re-fix the salary or pension of the respondent No. 1. *Ordered accordingly.*

09. The petitioners herein shall be well within their right to correct the mistake of granting the benefit of SRO 59 of 1990 in favour of the respondent No. 1 and re-fix the salary/pensionary benefits as the case may be, by withdrawing the benefit of SRO 59 of 1990 erroneously extended to the respondent No. 1.

10. With the aforesaid modification, the judgment impugned is upheld and this petition is **disposed of**

accordingly. The amount, if any, so far recovered from the respondent No. 1, shall be refunded to the respondent No. 1 within a period of two months.

(SANJAY PARIHAR) (SANJEEV KUMAR)
JUDGE JUDGE

SRINAGAR:

06.05.2026

"Mir Arif"

- (i) Whether the order is reportable? Yes/No.
- (ii) Whether the order is speaking? Yes/No.

