

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

Reserved on: 07.05.2026

Pronounced on: 15.05.2026

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Whether the operative part or
full judgment is pronounced:

Full

WP(C) No.2824/2024

SAJAD ALI MISGAR

...PETITIONER(S)/APPELLANT

Through: - Mr. Bilal Ahmad Malla, 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/Estt/377/482 of 2023 dated 28.08.2023, issued by respondent No.2, whereby his upgradation in the pay scale of Rs.950/1500 to the pay scale of Rs. 1200-2040 vide Order No.735-37/Estt/NAC/PHL dated 26.07.1997 and No. DLB/Estt/1051/8018 dated 05.11.2002 has been rescinded *ab initio* and 1st step *in-situ* promotion granted to him from the pay scale of Rs.4000-6000 to the pay scale of Rs.4500-7000 with effect from 01.08.2006 pursuant to order No.DULB/Estt/2906/781 of 2006 dated 20.09.2006 and 2nd In-situ promotion granted to him from pay scale of Rs.5200-20200+GP-2800 to the pay scale of Rs.9300-34800+GP-4200

with effect from 01.08.2015, has also been cancelled *ab-initio*. Vide the impugned order, it has been provided that placement of the petitioner as Tax Inspector vide order No.DULB/Estt/377/776 of 2020 dated 28.10.2020, being not cleared by DPC, is also cancelled. The impugned order, while according post facto sanction to the 1st and 2nd in-situ promotion to the petitioner with effect from 01.08.2004 and 01.08.2012 respectively, 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 Tax Collector in the pay scale of Rs.950-1500 vide order No.DULB/Estt/141 of 1995 dated 07.07.1995. The petitioner was thereafter upgraded to the pay scale of Rs.1200-2040/ vide order No.735-37/Estt/NAC/PHL, dated 26.07.1997, which was confirmed by respondent No.2 in terms of order dated 05.11.2002. In terms of order No.DULB/Estt/2906/781 of 2006 dated 20.09.2006, the petitioner was granted 1st step in-situ promotion from the pay scale of Rs.4000-6000 to the pay scale of Rs.4500-7000 with effect from 01.08.2006 under SRO 14 dated 15.01.1996. It has been submitted that the petitioner was granted 2nd step in-situ promotion from the pay scale of Rs.5200-20200+GP-2800 to the pay scale of Rs.9300-34800+GP-4200 with effect from 01.08.2015 in

terms of order No.DULB/Estt/3371-II/PS/817 of 2018 dated 21.07.2018.

3) It has been submitted that the petitioner was placed as Tax Inspector in the pay scale of Rs.5000-8000 pursuant to order No.DULB/Estt/377/776 of 2020 dated 28.10.2020, pending clearance by DPC.

4) It has been further submitted that, at the time of superannuation of the petitioner from service on 31.05.2022, he was working on the post of Tax Inspector. The petitioner goes on to contend that he was placed in the pay scale of Rs.5000-8000 attached to the post of Tax 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 has caused huge financial loss to the petitioner at the time of his retirement which has seriously affected his family. It has been contended that the recovery of excess amount made to the employee due to mistake or wrong

interpretation of the rules cannot be made family. It has been further contended that the impugned order 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 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 aforesaid benefits and his placement in the pay scale of Rs.5000-8000 has not been extended to the petitioner on account of any fraud, misrepresentation or mischief attributable to him. 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 the on the basis of illegal up-gradation, the petitioner has managed to get 1st step in-situ promotion vide order dated 20.09.2006 and 2nd step in-situ promotion from the pay scale to Rs.5200-20200 to the pay scale of Rs.9300-34800 vide order dated 21.07.2018 and thereafter the petitioner was placed as incharge Tax Collector vide order dated 28.10.2020 pending clearance by the DPC. It has been contended that the case of the petitioner was forwarded to the Deputy Director, Local Fund Audit and Pension office vide

communication dated 06.09.2022 for authorization of pension but the said office returned the case with the observation that the petitioner has been un-authorizedly upgraded initially from the pay scale of Rs.950-1500 to Rs.1200-2040 and based on said illegal upgradation, he has managed to get the in-situ promotion. Therefore, the said illegal orders were reviewed and the same were rescinded ab-initio in terms of the impugned order besides granting post-facto sanction to the 1st and 2nd step in-situ promotion in favour of the petitioner.

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.

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 31.05.2022 whereas the impugned order of recovery has been issued on 28.08.2023. Therefore, so far as the recovery of excess pay drawn by the petitioner on account of his alleged illegal upgradation from the pay scale of Rs.950-1500 to the pay scale of Rs.1200-2040 made vide order dated 26.07.1997 and his placement as Tax Inspector in the pay scale of Rs.5000-8000 made in terms of order dated 28.10.2020 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 from the pay scale of Rs.950-1500 to the pay scale of Rs.1200-2040 or when he was placed in the pay scale of Rs.5000-8000 attached to the post of Tax 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 Rs.5000-8000 attached to the post of Tax Inspector in terms of order dated 28.10.2020 (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 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 re-fix the pension of the petitioner by ignoring his placement in the pay scale of Rs.5000-8000 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 28.08.2023, to the extent it seeks to recover the excess emoluments drawn by the petitioner, is set aside, leaving it open to the respondents to re-fix pension of the petitioner in the light of the observations made hereinbefore.

(Sanjay Dhar)
Judge

SRINAGAR

15.05.2026

“Bhat Altaf-Secretary”

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