

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

Case:- WP(C) No. 1677/2021

Shrist Pal Sharma, Age 62 yearsPetitioner(s)
S/o Late Sh. Baij Nath
R/o Dayala Chak Road Hira Nagar, Kathua.

Through: Mr. Surjeet Singh Andotra, Advocate
with Mr. Sahil Sharma, Advocate.

Vs

- 1. Union Territory of J&K through
Commissioner/Secretary to Govt.,
Finance Department, Jammu.
Pin 180001.**
- 2. Vice Chairman
Jammu Development Authority, Jammu
Vikas Bhawan, Rail Head Complex,
Jammu. Pin Code 180016.**
- 3. Secretary
Jammu Development Authority, Jammu
Vikas Bhawan, Rail Head Complex,
Jammu. Pin Code 180016.**
- 4. Account Officer,
Jammu Development Authority, Jammu
Vikas Bhawan, Rail Head Complex,
Jammu. Pin Code 180016.**
- 5. Deputy Director, Local Fund Audit and
Pension, Jammu.
Pin 180001.**

..... Respondent(s)

Through: Mr. KDS Kotwal, Dy. AG for 1 & 5.
Mr. Adarsh Sharma, Adv. for R-2 to 4.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(16.01.2026)

1. The grievance which has led the petitioner to the institution of present writ petition is sourced to an **order No. 15 of JDA 2020** dated **10.07.2020** passed by the respondent No. 2- Vice Chairman/Vice Chairperson, Jammu Development Authority (JDA) in terms whereof the service book entries relatable to the petitioner have been revised on three aspects post his retirement which came to take place on 30.04.2019 thereby leaving the petitioner purportedly aggrieved as an off-shoot of the revision of Service Book entries relatable to the petitioner is going to be purported recovery to be effected against the petitioner's post retiral benefits.
2. The petitioner came to be in the employment of the Jammu Development Authority (JDA), as Chowkidar on Daily Wage basis for Shopping Complex Nehru Market in terms of an **Order No. 4074-77** dated **08.03.1978** passed by the Executive Engineer, JDA.
3. The petitioner's said engagement was meant from **01.03.1978** to ending March, **1978**. However, by virtue of an **Order No. 6269-72** dated **11.11.1978** again passed by the Executive Engineer, JDA, the petitioner, though holding

the assignment of Chowkidar but being a matriculate came to be assigned the job of Junior Assistant, SDC Sub Division No. III on account of creation of a new Sub Division.

4. The assignment of work as Junior Assistant in favour of the petitioner was supposed to be on Consolidated Pay basis w.e.f., **11.11.1978** onwards and was meant to be purely on temporary basis.
5. The petitioner, having invested a good number of years working as Junior Assistant in terms of assignment so made vide **Order No. 6269-72** dated **11.11.1978**, came forward with institution of a writ petition-**SWP No. 646 of 1985** before this Court filed on **19.07.1985** thereby seeking a writ of mandamus unto the JDA to give him grade of Rs. **410-700** as well as his co-petitioner Mr. Ashok Kumar in the said writ petition claiming on the basis of their appointment as Junior Assistants and in parity with the respondents No. 2 to 4 as named in the said writ petition being beneficiary of the said pay scale as against the said two petitioners being paid on consolidated basis.
6. While the aforesaid writ petition-SWP No. 646 of 1985 was pending adjudication, by virtue of an **Order No. JDA/Estt/471-75** dated **22.09.1987**, Secretary, JDA came to pass an order with respect to regularization and

absorption of Class-IV employees in the grade of Rs. 345-460 pre-revised (630-940 post revised) w.e.f., 24.08.1987.

7. In terms of said order, the petitioner, figuring at serial No. 2 in the list of five employees, thus, purportedly, came to be regularized against Class IV post w.e.f., 24.08.1987 but the petitioner somehow continued to be posted and working as Junior Assistant never dislodged or displaced from his said assignment by reference to his regularization against Class-IV post in terms of said Order No. JDA/Estt/471-75 dated 22.09.1987.
8. In the meantime, the writ petition-SWP No. 646 of 1985 filed by the petitioner herein along with the co-petitioner therein came to be allowed by the writ court in terms of a judgment dated **09.03.1988** whereby the JDA came to be directed to grant to the petitioner and his co-petitioner the same grade as granted to the respondents No. 2 to 4 from the date of institution of the writ petition in particular w.e.f., 01.08.1985 along with all consequential benefits.
9. This judgment dated 09.03.1988 of the writ court attained finality as a result whereof the respondent No. 2-Vice Chairman/Vice Chairperson, JDA, by virtue of an **Order No. JDA/Estt/PF/2384-86** dated **24.02.1989**, came to order

regularization of the petitioner as Junior Assistant w.e.f.,
01.08.1985.

10. In the course of his service, the petitioner came to be admitted to the benefits of Jammu and Kashmir Civil Service (Higher Standard Pay Scale) Rules, 1996 promulgated vide SRO No. 14 dated 15.01.1996 and in this regard, by virtue of an **Order No. JDA/Estt./1020-27** dated **01.07.1996** passed by the respondent No. 2-Vice Chairman/Vice Chairperson, JDA, the petitioner earned 1st In situ promotion to the pay scale of Rs. 1200-2040 w.e.f., **01.01.1995** followed by 2nd In situ promotion w.e.f., **01.12.1999** in terms of an **Order No. JDA/Estrb/04-07** dated **12.06.2002.**
11. The petitioner came to be placed and posted as Head Assistant Level-6 in the Pay Scale of Rs. 9300-34,800 + 4000 (revised) by virtue of an order dated **03.10.2016** passed by the Secretary, JDA at which post the petitioner came to superannuate on **30.04.2019** by virtue of an **Order No. JDA/Estb/998-1002** dated **09.03.2019** and accordingly the last pay certificate of the petitioner as Head Assistant Level-6 came to be issued with the following breakup of his last pay status:

Basic	Rs. 55200
DA	Rs. 6624/-

MA	Rs. 300
CCA	Rs. 120
HRA	Rs. 8832
Total	Rs. 71,076/-

12. The last pay certificate of the petitioner to the aforesaid effect was sent by the respondent No. 2-Vice Chairman/Vice Chairperson, JDA to the respondent No. 5-Deputy Director, Local Fund Audit and Pension, Jammu for the purpose of processing the pension post retiral benefits of the petitioner.
13. Accounts Officer, Jammu Development Authority (JDA), by virtue of letter No. JDA/ACCTTS/2019-20/399-400 dated 17.07.2019 recommended the case of the petitioner for authorization of pensionary benefits to the Local Fund Audit and Pensions office, Jammu.
14. The respondent No. 5-Deputy Director, Local Fund Audit and Pensions, Jammu in turn came forward with a communication No. **LFAP/J/2019-20/2030** dated **17.09.2019** addressed to the Vice Chairman/FA & CAO, Jammu Development Authority. For the sake of reference, the contents of said communication are reproduced as under:

“.....Kindly refer to your letter No. 2019-20/399-400 dated 17.07.2019 regarding the subject cited above in this context it is intimated while scrutinizing the service book of retiree it reveals that:-

1. **The official regularized on 24.08.1987 and promoted Jr. Assistant on 01.08.1985 which is contradictory.**
2. **His consolidated service which has taken into account while sanctioning IInd HSPS.**

As such you are requested to record the appointment of retiree in S.B and also review the consolidated service sanctioned for IInd HSPS which is inadmissible and excess drawn along with recovery if any.”

15. Purportedly acting by reference to said communication No. **LFAP/J/2019-20/2030** dated **17.09.2019** of Deputy Director, Local Fund Audit and Pensions, Jammu, the respondent No. 2- Vice Chairman/Vice Chairperson, Jammu Development Authority (JDA) came forward with re-writing of service book entries of the petitioner to his prejudice and thus passing the impugned order No. 15 of JDA of 2020 dated 10.07.2020.
16. In terms of the impugned order, the Vice Chairman/Vice Chairperson, Jammu Development Authority (JDA) has ascribed the date of regularization of the petitioner in the pay scale of 410-10-440-12-560 EB 16-700 w.e.f., 01.08.1985 as per the directions of the High Court of Jammu and Kashmir in writ petition OWP No. 646 of 1985 as against the original entry of promotion of the petitioner as Jr. Assistant in the pay scale of 410-10-440-12-560 EB 16-700 w.e.f., 01.08.1985 (F.N) vide Vice Chairman/Vice

Chairperson JDA's No. DA/Esstb/PF/2384-86 dated 24.02.1989.

17. In addition, the service book entry of regularization of the petitioner from consolidated pay as Class-IV in the Pay Scale of 630-940 vide Secretary JDA's Order No. DA/Estb/471-75 dated 22.09.1987 was declared as null and void. Consequent direction in the impugned order is with respect to 2nd Higher Standard Pay Scale of 4500-125-7000 (In situ promotion) sanctioned in favour of the petitioner as Jr. Assistant granted w.e.f., 01.12.1999 to be read as 01.09.2003 and this carries the potentiality of recovery against the petitioner being effected leaving the petitioner bothered to come forward with the writ petition seeking the following reliefs:

- (i) **To quash impugned order no. LFAP/J/2019-20/2030 dated 17.09.2019 issued by Deputy Director, Local Fund Audit and Pensions, Jammu.**
- (ii) **To quash impugned order No. 15 of JDA 2020 dated 10.07.2020 with regard to entry no. 03 by virtue of which IInd HSPS of 4500-125-7000 (in situ promotion) sanction in favour of petitioner vide order no. JDA/ESTB/04-07 dated 12.06.2002 may be read as 1/09/2003 instead of 1/12/1999 as irrational, ultravires, unconstitutional and contrary to the provision of law.**
- (iii) **To quash then impugned order No. PPO No. 542106393-JDA dated 26.09.2020 by virtue of which the pension was fixed by the concerned respondents.**

- (iv) **With a further direction to the respondents to pay the arrears of pension after fixing the same as per the last pay drawn by the petitioner and gratuity withheld by the respondents and revised cash in lieu of leave along with interest @ 20% per annum till the same is actually released and paid to the petitioner.**
- (v) **With a further direction to the respondents to pay back the amount of Rs. 1,40,194/- along with interest @ 20% illegally deducted from petitioner by the respondents at the time of settlement of pension claim.**

18. In support of his case, the petitioner has referred the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and Ors Vs. Rafiq Masih, AIR 2015 SC 696** declaring the position of law that no recovery to be effected by an employer if excess payment has been made to an employee without any act of omission or commission having taken place at the end of an employee. In addition, the petitioner also refers to the judgments of this Court in SWP Nos. 1128/2010, 1130/2010 and 1686/2013.
19. The respondents No. 2 to 4 have come forward with reply to the writ petition whereas, respondent No. 5 has come forward with his own reply. In the reply, it is being stated that on the basis of revision of date of In situ promotion reckoning instead of 01.12.1999 to 01.09.2003, an excess drawn amount of Rs. 1,40,194/- is recoverable from the pensionary benefits of the petitioner.

20. It has been stated that pensionary benefits have been authorized in favour of the petitioner as ex-Head Assistant, JDA vide PPO 542106393 JDA dated 26.09.2020 read with office letter No. 880-82 dated 05.10.2020. On the part of the respondents No. 2 to 4 i.e., the officials of the JDA, the revision of in situ promotion date is being defended.
21. A bare perusal of the impugned order no. LFAP/J/2019-20/2030 dated 17.09.2019 issued by Deputy Director, Local Fund Audit and Pensions, Jammu would show that it is nothing but a cover up by the JDA on its own act of omission and commission to the prejudice of the petitioner. The petitioner is not the author of his own service record book. It is the concerned establishment of the JDA which was supposed to remain alert and alive to the corresponding developments related to the service career of the petitioner in the context of his original engagement followed by subsequent postings and then the judgment of this Court passed in writ petition OWP No. 646 of 1985 which attained finality to be given effect to without any dilution.
22. Furthermore, the petitioner was not extended the courtesy of even being heard by the Vice Chairman/Vice Chairperson of JDA and that also renders the impugned order vitiated with serious illegality.

23. There is no doubt to the fact that the grievance of the petitioner is fully secured by the verdict of the Hon'ble Supreme Court of India in the case of **State of Punjab and Ors Vs. Rafiq Masih, AIR 2015 SC 696.**
24. In the light of the aforesaid, the writ petition is allowed. Impugned order no. **15 of JDA 2020** dated **10.07.2020** is set aside by reference to entry No. 3. There shall be no change of date with respect to the benefit of in situ promotion accorded to the petitioner and pension case of the petitioner to be processed accordingly.
25. Disposed of accordingly.
26. The detailed order is following the order dated 27.05.2024 vide which the petition was ordered to be allowed as is hereby being done.

सत्यमेव जयते

(RAHUL BHARTI)
JUDGE

JAMMU
16.01.2026
Naresh/Secy

Whether order is speaking: Yes/No
Whether order is reportable: Yes/no