



2025:DHC:2868-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 258/2025, CM APPL. 22742/2025 & CM APPL. 22743/2025

UNION TERRITORY OF JAMMU AND KASHMIR

THROUGH OFFICE OF TREASURY OFFICERAppellant

Through: Mr. Rushab Aggarwal, Advocate.

versus

SMT. BIMLA KOUL HANDOO AND ANRRespondent

Through: Ms. Sakshi Mehley, Ms. Harshita Kumar, Mr. Sajal Manchanda and Mr. Harsh Chaudhary, Advocates for R-1.

Mr. Rajinder Wali, Advocate for JK Bank/R-2.

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Date of Decision: 21.04.2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J (ORAL)

CM APPL. 22743/2025 (for condonation of delay in filing the appeal)

1. Cause shown is sufficient. Accordingly, the application is allowed. Delay of 55 days in filing the appeal is condoned.

2. The application stands disposed of.

LPA 258/2025

3. Present Letters Patent Appeal has been filed challenging the order dated 07.01.2025 passed by the learned Single Judge in W.P.(C) 4817/2023 titled "*Smt Bimla Koul Handoo vs. Union Territory of Jammu and Kashmir & Anr.*", wherein the writ petition filed by the respondent no.1 herein has



been allowed directing the appellant to refund the amount of Rs.11,61,477/- wrongfully deducted from the bank account of the respondent no.1 within ten weeks from the date of the order and in default whereof payment of the said amount would attract 8% interest per annum from the date of deduction till disbursal.

4. Mr. Aggarwal, learned Standing Counsel for the appellant/Union Territory of Jammu & Kashmir has urged the same submissions as was addressed before the learned Single Judge. His first contention is that the respondent no.1 could not have maintained the underlying writ petition before this Court premised on the fact that the deceased husband of the respondent no.1 was employed with the State of Jammu & Kashmir in the Forest Department as a Forest Officer. Secondly, he contends that the respondent no.1 is a resident of Noida, Gautam Budh Nagar, Uttar Pradesh and thus ought to have filed the writ petition in the jurisdictional High Court. He states that merely because the sub-treasury of the Government of Jammu & Kashmir is located in Delhi, would not, *ipso facto*, confer jurisdiction upon this Court. He relies upon the judgement of the Hon'ble Supreme Court in *Ambica Industries vs. Commissioner of Central Excise; 2007 SCC OnLine SC 777* and *Sterling Agro Industries Ltd. & Ors. vs. Union of India & Ors.;2011 SCC OnLine Del 3162* of this Court to submit that the principle of *Forum Conveniens* squarely applies in the present case which has been overlooked by the learned Single Judge.

5. Learned counsel contends that Article 291 of the Jammu and Kashmir Civil Service Regulations, 1956 (hereinafter as *J&K Regulations*) regulates the procedure of recovery in case pension granted to the government servant is found to be in excess of the entitlement, and even at a later stage, such government servant can be called upon to refund the



excess. He further contends that the note appended to the aforesaid Article, emphasizes that a declaration in form-A in compliance of Article 291, was to be submitted by the deceased husband of the respondent no.1. In other words, he contends that the appellant is entitled to seek recovery of the excess amount paid as pension to respondent no.1 or the deceased employee. He contends that the ratio laid down in the judgment of the Supreme Court in *State of Punjab & Haryana & Ors. vs. Rafiq Masih; 2014 SCC OnLine SC 1027* and relied upon by the learned Single Judge, is diluted in view of the judgment of the Supreme Court itself in *High Court of Punjab and Haryana and Ors. vs. Jagdev Singh; 2016 SCC OnLine SC 748*, holding that the principle of non-recovery of pension laid down in *Rafiq Masih (supra)* would not be applicable to a case where the officer, from whom the pension was sought to be recovered, was clearly placed on notice in the first instance. On that premise, he contends that Article 291 of the J&K Regulations, is itself a notice and deceased husband of the respondent no.1 was not required to put to notice separately. In that context, he argues that delay of 17 years in seeking recovery could not be held against the appellant.

6. He invites our attention to Circular dated 08.01.2013, issued by the Finance Department of Government of Jammu and Kashmir deciding to deduct/recover 50% of the monthly pension remitted to its employees to make good the excess amount paid. Based thereon, learned counsel contends that it is on the strength of such Circular that the appellant initiated recovery of excess amount from the respondent no.1.

7. On the basis of the aforesaid argument, learned counsel for the appellant forcefully contends that the impugned judgment is unsustainable in law as also on facts and ought to be set aside by allowing the present



appeal.

8. *Per contra*, learned counsel appearing for the respondent no.1, on advance notice, refutes the submissions made on behalf of the appellant and reiterates the findings of facts as also the legal reasoning rendered by the learned Single Judge. He pleads that the present appeal be dismissed *in limine*.

9. Having heard the learned counsel for the parties and perused the impugned judgment as also the material on record, we are of the considered opinion that the appeal is unmerited and deserves to be dismissed.

10. The argument of the learned counsel for the appellant on the issue of lack of territorial jurisdiction in the underlying writ petition is without any merit. The principle of *Forum Conveniens* has been developed in the judgment of the Hon'ble Supreme Court in ***Kusum Ingots & Alloys Ltd. vs. Union of India & Anr.***; (2004) 6 SCC 254, ***Ambica Industries (supra)*** and reiterated by the Full Bench of this Court in ***Sterling Agro (supra)***. It is trite that territorial jurisdiction of a High Court, while exercising its power of judicial review, jurisdiction is not merely premised on Clause 2 of Article 226 of the Constitution but it also has to be examined keeping in view the doctrine of *Forum Conveniens*. It is true that the deceased husband of the respondent no.1 was an employee of the State of Jammu and Kashmir in the Forest Department as a Forest Officer and the respondent no.1 is ordinarily a resident of Noida, Gautam Budh Nagar in the State of Uttar Pradesh, however, the part of cause of action, so far as respondent no.1 is concerned, can be said to have accrued at Delhi which is predicated on two factors, namely, (i) the deduction of the disputed amount was effected admittedly from the bank account of the respondent no.1 maintained at Delhi and (ii) the letters dated 10.10.2022 and 13.10.2022



were issued by the office of the Treasury Officer, Sub-Treasury, Government of Jammu and Kashmir located at New Delhi. It was on the basis of these letters that the amount in dispute was deducted. A fortiori, a part of cause of action, and in our view a very relevant and core part of cause of action had arisen within the territorial jurisdiction of this Court. Thus, having found as a fact that part cause of action had arisen in Delhi, clause 2 of Article 226 of the Constitution of India, would entitle the respondent no.1 in maintaining the underlying writ petition at Delhi, notwithstanding the fact that it may strictly not fall within the doctrine of *Forum Conveniens*.

11. The reliance of learned counsel for the appellant on Article 291 of the J&K Regulations as an edifice to the submission that the mere presence of such Article was a “notice” to the deceased employee or respondent no.1, in terms of the judgment in *Jagdev Singh (supra)*, is misplaced. Equally, the submission predicated thereon is fallacious and unmerited. On a query by the Court, learned counsel was unable to show any document worth its salt, on record, to demonstrate that as propounded by the Hon’ble Supreme Court in *Jagdev Singh (supra)*, the deceased employee was ever put to any notice of the nature as observed in *Jagdev Singh (supra)*. It would be an over exaggeration to countenance a situation where the mere existence of a Regulation, in the nature of Article 291 of the J&K Regulations, could be propounded or construed as a notice to all its employees without the need to put them to notice. The said argument is principally and fundamentally against the principle of good governance. If this argument were to be believed, none of the statutory authorities under the statutory regulations, would ever need to issue any notice to the alleged defaulter and would have the unfettered and untrammelled powers and



jurisdiction to take action without the need to put the person concerned to notice. That cannot be legally acceptable. Thus, there being no document on record to show a “notice” or a declaration in Form-A in compliance of Article 241 of the J&K Regulations, we find the said submission unpersuasive and untenable, both on facts and on law.

12. Though learned counsel sought to distinguish the ratio laid down in *Rafiq Masih (supra)* by relying upon *Jagdev Singh (supra)*, we find that on facts since the deceased employee of the respondent no.1 was never put to any notice, the ratio in *Rafiq Masih (supra)* would be squarely applicable to the facts of the case and has rightly been applied by the learned Single Judge.

13. Learned counsel relied upon the Circular dated 08.01.2013 issued by the Finance Department of the appellant, directing deduction/recovery of 50% of the monthly pension remitted to its employees to contend that the recovery of the disputed amount has a sound basis and cannot be rejected. Though the said circular has not been questioned in the underlying proceedings, yet, the ratio in *Jagdev Singh (supra)* necessitated putting the deceased employee to notice at the time of grant of pension to the effect that in case of wrong fixation, the pensioner shall be liable to refund the excess amount. That having been found non compliant, the mere issuance of a circular would not come to the rescue of the appellant.

14. That apart, it is pertinent to note that the impugned action in the underlying writ petition was initiated after a long lapse of 17 years from the time the pension was being disbursed either to the deceased employee or to the respondent no.1. No explanation has been tendered as to why and for what reason, the appellant did not take any action. We are not inclined to interfere with the sound reasoning rendered by the learned Single Judge on



2025:DHC:2868-DB



the aforesaid three submissions. We additionally are of the opinion that the immense delay also enures to the benefit of the respondent no.1, particularly keeping in view the principles laid down in *Rafiq Masih (supra)*.

15. In that view of the matter, we find the appeal meritless and dismiss the same at the stage of admission hearing alongwith pending applications, though without any order as to costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

APRIL 21, 2025/aj