

S. No.15
Regular List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No.2887/2025
CM No.(7637/2025), CM No.(8499/2025)

MANZOOR AHMAD AKHOON

.....Petitioner(s)

Through: Mr.Bilal Ahmad Malla, Advocate

V/s

UNION OF INDIA AND ORS.

... ..Respondent(s)

Through : Mr.T.M.Shamsi, DSGI with
Mr. Faizan, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
05.08.2026

- 1) The petitioner was appointed as Constable (GD) in Border Security Force (BSF) on 12.08.1990 and he was promoted as Head Constable (GD). He was granted thirty days earned leave w.e.f 07.05.2019 to 05.06.2019 with permission to avail one day joining period.
- 2) According to the petitioner on 7th May, 2019, while leaving Frontier Headquarter BSF Kashmir alongwith his family in his personal car, the same was hit by an oil tanker. As a result of this accident, the petitioner and his three family members received serious injuries. The injured were evacuated to SKIMs Medical College Bemina, Srinagar and remained admitted there till

28.05.2019. The petitioner is stated to have suffered multiple disability and a duly constituted Medical Board assessed his disabilities to the extent of 80%.

3) It has been submitted that the petitioner was transferred from BSF Headquarter Kashmir to Punjab in the year 2022 and the said order came to be challenged by him by way of writ petition bearing WP(C) No.1717/2022 and by virtue of order dated 10.08.2022 passed in the said petition the transfer order of the petitioner was stayed.

4) It has been submitted that the petitioner was boarded out on the basis of the recommendations made by the Medical Board by respondent No.4 in terms of order dated 25.11.2024. The petitioner made a representation against the said order and on the basis of the recommendations of the Review Medical Board, he was finally boarded out by virtue of order dated 03.07.2025. It has been submitted by the petitioner that till date his pension has not been disbursed. However, vide communication No.Esst/Recovery/CH-Srinagar/Order/2025/658-62 dated 26.03.2025, the petitioner was informed that he has overdrawn an amount of Rs.4,64,487/- on account of pay and allowances which have been sought to be recovered from the retirement Gratuity of the petitioner.

5) The petitioner has challenged the aforesaid communication seeking recovery of alleged overdrawn pay and allowances on the

strength of ratio laid down by the Supreme Court in the case of *State of Punjab and ors vs. Rafiq Masih*, (2015) 4 SCC 334 by contending that it is impermissible in law to recover the excess emoluments drawn by an employee belonging to Class III and Class IV service or from retired employees or employees who are due to retire within one year of the order of recovery.

6) The respondents have filed CM No.8499/2025 seeking vacation of interim order passed by this Court on 21.11.2025. At the request of learned counsel for the respondents, the said application filed by the respondents has been treated as reply on behalf of the respondents.

7) As per case of the respondents, the petitioner was retired on medical grounds w.e.f 26.11.2024 under Rule 25 of BSF Rules 1969. It has been submitted that the petitioner's pension case was processed and while doing so, it was observed that he had been drawing excess pay without the grant of Modified Assured Career Progression (MACP). It has been submitted that MACP Board was constituted and petitioner's name was duly considered for grant of MACP and consequent to approval of the Board, his pay was re-fixed and verified by the Internal Audit Office of BSF Kashmir. This resulted in the identification of excess pay drawn by the petitioner amounting Rs.4,64.487/- from 01.01.2018 to 25.11.2024,

which is sought to be recovered from his retirement Gratuity in terms of impugned order dated 26.03.2025.

8) I have heard learned counsel for the parties and perused the record of the case.

9) It is not in dispute that the petitioner, who was working as a Head Constable with the BSF was retired on medical grounds w.e.f 26.11.2024. According to the respondents, while processing the pension case of the petitioner it was found that the petitioner had drawn excess amount of Rs.4,64.487/- from 01.01.2018 to 25.11.2024, which is sought to be recovered by virtue of the impugned order from his retirement Gratuity.

10) The Supreme Court in the case of **Rafiq Masih** (Supra) has on the grounds of the equity held that in certain situations where payments have mistakenly been made by the employer in excess of entitlement of an employee, the recoveries by the employers from the employees would be impermissible in law. The said situations are enumerated 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.”

11) The aforesaid ratio laid down by the Supreme Court has been consistently followed by this Court and by Supreme Court in its later judgments. Therefore, the position of law is that recovery from retired employees is impermissible in law, particularly, when there is nothing on record to show that an employee has connived with the officials of the employer while drawing excess amount of emoluments.

12) In the present case, the petitioner happens to be an employee belonging to Class III and he has retired from service. The excess emoluments drawn by him are sought to be recovered by the respondents after his retirement. It is not the case of the respondents that the petitioner had either fraudulently or in connivance with the authorities of the respondent Force managed to draw excess emoluments. Therefore, in view of the ratio laid down by the Supreme Court in **Rafiq Masih's case** (supra) it is not permissible for the respondents to recover the excess emoluments drawn by the petitioner.

13) In view of the foregoing discussion, the writ petition is **allowed** and the impugned order dated 26.03.2025, issued by

respondent No.4, seeking recovery of excess emoluments from the retiral benefits of the petitioner, is quashed. The respondents are, accordingly, directed to release the retiral benefits of the petitioner as are admissible to him without deducting the amount as mentioned in the impugned recovery order dated 26.03.2025.

(SANJAY DHAR)
JUDGE

SRINAGAR
05.08.2026
Sarveeda Nissar

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

