



104 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM-10974-10975-CWP-2025 in/and
CWP-503-2024**

Date of Decision : 05-08-2025

PARAMJIT SINGH VIRK

.....Petitioner

VERSUS

STATE OF PUNJAB AND ORS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ranjivan Singh, Advocate with
 Mr. Rishan Raag Singh, Advocate
 for the petitioner.

Mr. T.P. S Chawla, Sr. DAG Punjab.

Mr. Nitish Kumar, Advocate for
Mr. Vikas Chatrath, Advocate
For the respondent No.5-Bank.

HARSIMRAN SINGH SETHI, J. (Oral)

CM-10975-CWP-2025

Present application has been filed for pre-poning the date of hearing of the main petition i.e. CWP No.503 of 2024, which stands adjourned to 18.12.2025 and disposing the same in terms of judgment passed in CWP No.459 of 2024 (Annexure A-2).

Notice of the application to the counsel opposite.

Mr. T.P.S Chawla, Sr. DAG Punjab accepts notice on behalf of respondent-State and Mr. Nitish Kumar, Advocate for Mr. Vikas Chatrath, Advocate accepts notice on behalf of the respondent No.5-Bank and they

raises no objection for the grant of prayer as raised in the present application.

On the joint request of the parties, the main petition i.e. CWP No.503 of 2024 is preponed from 18.12.2025 to today.

CM-10974-CWP-2025

This is an application for placing on record relevant documents as Annexure A-1 to Annexure A-3.

Keeping in view the contents mentioned in the application, the same is allowed. Annexure A-1 to Annexure A-3 are taken on record subject to all just exceptions.

CWP-503 of 2024 (O&M)

1. In the present petition, the grievance being raised by the petitioner is that the upon refixing the salary of the petitioner, the recovery is being done from him, which is incorrect and the same cannot be done keeping in view the judgment passed by the Hon'ble Supreme Court of India in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195.*

2. Upon notice of motion, the respondents have filed the reply wherein, it has been mentioned that the recovery is being done as, the petitioners were granted the excess pension beyond their entitlement and any benefit received by the employee beyond entitlement, can be recovered by the State.

3. Learned counsel for the petitioner submits that, the withdrawal of the benefit upon refixation of pay is not being challenged and only the

recovery is being challenged, which is not permissible as per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***.

4. I have heard the learned counsel for the parties and have gone through the records of the present case with their able assistance.

5. It may be noticed that petitioner is a retired employee and after the retirement, the benefit extended to him has been withdrawn and recovery has been ordered.

6. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***, no recovery of excess payment can be done after withdrawing an undue benefit which an employee has been continuously receiving for a period of five years before the same was withdrawn. The relevant paragraph of the said judgment is as under:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(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.”

7. Further, Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022***, has held that where an employee was not at fault with regard to the receiving a benefit and there is no misrepresentation on behalf of the employee concerned to get the emoluments beyond his/her entitlement, the recovery cannot be done from employee concerned. The relevant paragraph of the said judgment is as under:-

“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the

employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

8. Keeping in view the totality of the circumstances, the recovery of the excess amount being done from the petitioner is not permissible after his retirement and the impugned recovery order is accordingly set aside.

9. Any amount recovered from the petitioner in pursuance to the impugned orders, be refunded back to the petitioner within a period of **8 weeks** from the receipt of copy of this order.

10. Present petition is disposed of in the above terms.

11. Pending application, if any, also stands disposed of.

05-08-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO