

CWP-18906 of 2025

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

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CWP-18906 of 2025

DATE OF DECISION :-10.07.2025

Union of India and others

...Petitioners

Versus

Armed Forces Tribunal and another

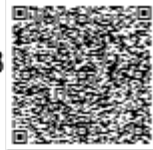
...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present:- Dr. Anandeshwar Gautam, Senior Panel Counsel for UOI
for the petitioners.

SANJEEV PRAKASH SHARMA, J. (ORAL)

1. Learned counsel for the petitioners submits that recovery can be made from the pension if the allowances are wrongly released. We notice that the learned AFT has relied upon the subsequent judgment passed by the Hon'ble Apex Court in the case of '*State of Punjab Vs. Rafiq Masih (White Washer)*'. We also refer to the judgment passed by the Hon'ble Apex Court in the case of '*Thomas Daniel versus State of Kerala and others*' 2022 SCC Online SC 536' wherein the Hon'ble Supreme Court has reiterated the law as laid down in the case of *State of Punjab Vs. Rafiq Masih (White Washer)*' and held that recovery from pension cannot be made with regard to erroneous payments.



2. The relevant part of the judgment passed by the Hon'ble Apex Court in the case of '**State of Punjab Vs. Rafiq Masih (White Washer)**' is as follows :-

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

xxx

xxx

18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the 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."

3. In view thereto, the writ petition challenging the order dated 15.05.2023 is found to be without any force. The same is accordingly dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

10.07.2025
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No