



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

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**CWP-32556-2019 (O&M)
Decided on : 06.05.2025**

AMARJIT

..PETITIONER

Versus

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Geeteshwar Saini, Advocate for
Mr. R. K. Arya, Advocate for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

HARSIMRAN SINGH SETHI , J. (Oral)

1. In the present petition, the challenge is to the recovery of Rs.50,245/-, which is being effected from the petitioner by the respondents-department.
2. Learned counsel for the petitioner submits that the petitioner retired from service on 28.02.2017 and the respondents effected the recovery of Rs. 50,245/- from the petitioner from his salary in the month of January, 2017 and that too without giving any show-cause-notice to the petitioner, prior to taking such an adverse action against petitioner which action on the part of the respondents is arbitrary and illegal.
3. Learned counsel for the respondents on the other hand submits that as the petitioner's salary was not fixed correctly and vide office order dated 11.01.2017, the salary of the petitioner has been re-fixed, it was found that a sum of Rs. 50,245/- has been paid in excess of his entitlement and is liable to be recovered from the petitioner as the same is public money, hence, the excess amount paid to the petitioner should be allowed to be recovered from the petitioner.



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4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. As per settled principle of law settled by the Hon'ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., AIR 2015 SC (civil) 939**, no recovery could have been done from an employee, who has retired or is retiring within a period of one year and in the present case, the recovery has been done from the petitioner after he attained the age of superannuation, hence, the recovery made by the respondents from the petitioner is impermissible as per the judgment passed in **Rafiq Masih's case (supra)**. 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



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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.”

6. Learned counsel for the respondents have not been able to rebut that the claim of the petitioner with regard to the challenge to the recovery of Rs. 50,245/- is covered in his favour keeping in view the judgment of the Hon’ble Supreme Court of India in **Rafiq Masih’s case (supra)**.

7. Apart from this, as per the judgment of the 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**, it has been held by the Hon’ble Supreme Court of India where there is no misrepresentation or fraud on behalf of an employee so as to receive 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



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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 above, no recovery of the excess amount paid to petitioner can be done from the petitioner keeping in view the judgment of the Hon’ble Supreme Court of India in **Rafiq Masih’s case (supra)** as well as through **Thomas Daniel’s case (supra)**. Hence, the orders passed by respondent recovering the excess amount paid to the petitioner is set aside.

9. Any recovery done from the petitioner by the respondents be refunded back to the petitioner within a period of 8 weeks from the receipt of copy of this order, and in case, the same is not paid, the said amount will



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carry an interest of 6 % per annum from the date the payment had to be made till actual date of payment.

10. The present petition is allowed in the above terms.

11. Civil Miscellaneous application pending if any is also disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

06.05.2025

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Whether speaking/reasoned: Yes/~~No~~

Whether Reportable: ~~Yes~~/No