



CWP-14239-2017(O&M)

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

CM-8702-CWP-2025 and
CM-8703-CWP-2025 in/and
CWP-14239-2017 (O&M)
Decided on:03.07.2025

Chanchal Mehbub Singh

.... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harbans Lal Sharma, Advocate
for the applicant-petitioner.

Mr. Rahul Rampal, Addl. AG, Punjab.

Harsimran Singh Sethi, J. (Oral)

CM-8702-CWP-2025

The prayer in the present application filed by the petitioner is for condonation of delay of 149 days in filing the application for restoration i.e. CM-8703-CWP-2025.

Notice of the application to the counsel opposite.

Mr. Rahul Rampal, Addl. AG, Punjab, accepts notice on behalf of respondent-State and raises no objection in case, the prayer made in the present application is allowed.

Keeping in view the averments mentioned in the application, the same is allowed. Consequently, the delay of 149 days in filing the application for restoration i.e. CM-8703-CWP-2025 is hereby condoned.

CM-8703-CWP-2025

Present application has been filed for recalling the order dated 28.11.2024, by which, the present writ petition was dismissed for



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non-prosecution.

Notice of the application to the counsel opposite.

Mr. Rahul Rampal, Addl. AG, Punjab, accepts notice on behalf of respondent-State and raises no objection in case, the prayer made in the present application is allowed.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed.

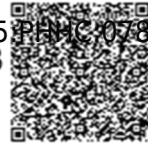
Consequently, the order dated 28.11.2024 is recalled and the writ petition is restored to its original number and status and the main writ petition is taken up for hearing today itself.

Main case

1. In the present petition, the challenge is to the order dated 03.04.2017 (Annexure P-3) vide which the recovery was directed from pension of the petitioner on the ground that excess payment of Rs.1,38,683/- from 01.10.2005 to 31.01.2007 was made, which has been recovered from the pensionary benefits of the petitioner, which is causing prejudice.

2. Learned counsel for the petitioner argues before this Court that once any payment has been made, even if the same was not as per the entitlement, but the said payment cannot be recovered after the retirement by placing reliance on the judgment of Hon'ble Supreme Court of India in the case ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. 2015(1) SCT 195***. Further, learned counsel argues that no recovery can be done from the retired employee and therefore, the benefit of excess payment already given to the petitioner employee, cannot be withdrawn and the recovered amount be released to the petitioner employee.

3. Upon notice of motion, the respondents have appeared. Learned counsel for the State has submitted that the retirement date of the petitioner



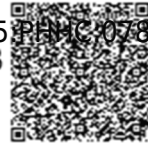
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employee was 30.09.2005 but after considering the correct date of birth i.e. 02.01.1949, the petitioner was allowed to continue in service upto 31.01.2007. Upto the said period, the petitioner has already availed the benefit of salary, which has been paid by the respondent-department and accepted by the petitioner employee.

4. Learned counsel for the respondent has further submitted that once the discrepancy regarding the date of birth came to the knowledge of the respondent-department, the petitioner was retired retrospectively from 01.10.2005 and inadvertently, the payment of pension from 01.10.2005 to 31.01.2007 was also paid apart from salary already paid for the said period. Learned counsel for the respondents further submits that for the period i.e. 01.10.2005 to 31.01.2007, the petitioner has already received the salary, hence, the petitioner could not have been given the pension for the same period as, no employee is entitled for the salary and pension for the same time duration and therefore, the amount of pension, which was wrongly paid to the petitioner employee, has been recovered.

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

6. Though, it is a settled principle of law that no recovery can be affected from the retired employee but, the employee has also to be truthful to the authorities concerned. The employee, in case has received any amount beyond entitlement, and he knows about the said fact at the time of receiving the same, the judgment of '**Rafiq Masih's case(supra)**' will not be applicable. Said principle of law is only applicable where an amount has been given to an employee without his knowledge that he was being paid beyond his entitlement. Applying the said principle in the present case, the petitioner employee knew that he has received the salary for the period from



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01.10.2005 to 31.01.2007 hence when for the same period, the pension was paid to him, being an honest citizen of this Country he should have inform the authorities concerned that he has already worked and has received the salary for the period in question rather than accepting the amount of pension for the same period, which was beyond his entitlement. Rather despite due knowledge of the said fact petitioner accepted the pension as well. Once an employee accepts the amount beyond his entitlement with due knowledge, it is to be treated as misrepresentation for all intent and purposes and where any employee received an amount with misrepresentation, recovery can always be accepted.

7. In case, the prayer of the petitioner employee is allowed, he will be receiving the salary also from 01.10.2005 till 31.01.2007 and also the pension for the same period. No employee can receive pay as well as pension for the same period and therefore, the recovery of excess amount paid of the pension for the aforementioned period which the petitioner has already received the salary is within the jurisdiction of the respondent keeping in view the facts and circumstances of the present case.

8. Keeping in view the above mentioned facts and circumstances, no ground is made out for interference in the impugned order. Accordingly, the present petition stands dismissed.

8. Any civil miscellaneous application pending, if any, also stands disposed of.

03.07.2025
sonia

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/non-speaking?

Yes

Whether reportable?

Yes