



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

224

CWP-13301-2021

Date of Decision: 17.09.2025

VIRENDER PAL

...Petitioner

Versus

UNION OF INDIA AND ORS

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr. R.S. Sangwan, Advocate,
for the petitioner.

Mr. Arvind Seth, Senior Panel Counsel,
for the respondents-UOI.

HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present petition, the challenge is to the order dated 17.03.2021 (Annexure P-1) passed by the respondents, by which not only the pay of the petitioner has been refixed after his retirement but also an amount of Rs.1,75,274/- has also been recovered from him on the ground that his pay had been wrongly fixed @ Rs.11840/- instead of Rs.11170/- w.e.f. 01.07.2006, which led to excess payment to petitioner and that too, after his retirement from service.

2. Learned counsel for the petitioner submits that even the pensionary benefits admissible to petitioner were released after a delay but the said delay has been accepted by the Tribunal and the petitioner has only been granted the benefit of interest at the rates applicable to GPF and the petitioner has come before this Court qua one grievance only, which is with regard to the recovery of Rs.1,75,274/-, which recovery has already been



done by respondents, which has been upheld by the Tribunal.

3. Learned counsel for the petitioner argues that once the petitioner had already retired from service on attaining the age of superannuation on 31.07.2016, his salary could not have been refixed thereafter so as to make recovery from the retiral benefits admissible to him as no recovery is permissible from a retired employee as per the judgement of the Hon'ble Supreme Court of India in ***State of Punjab and others vs Rafiq Masih and others***, SCT 2015 (1) 195.

4. Learned counsel appearing on behalf of the respondents concedes the fact that during the period when the petitioner was in service, his pay was not altered but as a discrepancy was found by accounts department qua fixation of the pay of the petitioner and consequently, the pay of the petitioner was refixed after his retirement and the excess amount paid to him was sought to be recovered, which is well justified as the same is public money and the petitioner cannot be allowed to retain the amount beyond his entitlement.

5. We have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

6. As per the settled principle of law, recovery cannot be made from the retired employee. As per the judgement of ***Rafiq Masih's*** case (supra), no recovery can be made from the retired employee and para 12 of the said judgement 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. Learned counsel for the respondents has not been able to dispute that as per the paragraph of the judgment in ***Rafiq Masih's*** case (supra) reproduced hereinbefore, recovery cannot be made from a retired employee.

8. Not only this, as per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Thomas Daniel vs. State of Kerala***, **2022 SCC Online SC 536**, in case there is no misrepresentation or fraud on



the part of the employee, the excess amount paid to such an employee cannot be recovered. 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.”

10. Keeping in view the settled principle of law noted hereinbefore, as the petitioner had already retired from service by the time his pay was revised and the recovery was made from him along with the fact that there was no misrepresentation or fraud on the part of the petitioner qua fixation of his salary, which was re-fixed after his retirement, the excess amount paid to him during service period could not have been recovered and therefore,



any recovery made from the petitioner out of his pensionary benefits cannot be sustained and the same is, accordingly, set aside. The sum of Rs.1,75,274/- recovered from the petitioner be refunded back to the petitioner within a period of eight weeks from the date of receipt of copy of this order.

11. The writ petition is disposed of accordingly.

(HARSIMRAN SINGH SETHI)
JUDGE

September 17, 2025
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No