

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.3364 of 2020
Decided on: 27th July, 2026

Hermesh Dutt Prabhakar

....Petitioner

versus

State of H.P. and another

...Respondents

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹

For the petitioner: Mr. Amrick Singh, Advocate.

For the respondents: Mr. Amandeep Sharma,
Additional Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the petitioner has
prayed for the following substantive relief:-

“a) That a Writ of Certiorari may be issued for quashing and set-aside the impugned office order No. Udyog Bhu/Acctts./Pay Arrears/-7364 Government of Himachal Pradesh Department of Industries, (Geological Wing) Annexure P-1.”

2. The facts as emerge from the pleadings are that the petitioner was appointed to the post of Rigman with the respondents on 27th May, 1974 and served at various places. He retired from service on 31.05.2009.

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

3. It has further been averred that during the Audit conducted for the period from 4/2014 to 11/2015, it was noticed that over payment of allowances of Rs.23,45,000/- has been made to the Drilling staff posted in different Drilling Units of the Industries Department, H.P. w.e.f. 01.03.2005 to 31.12.2015. On the basis of the said audit report, a communication dated 29.11.2019 (Annexure P-1) was issued, wherein, it has been mentioned that though the matter regarding the necessary approval to fix the headquarter of the Drilling staff at Shimla instead of Tehsil headquarter was sought, so that, the audit para could be settled. However, the State Government had shown its inability to concur with the said proposal of the Department and as such the recovery of the over payment of allowances was required to be recovered from the concerned officers/officials, who worked in the Drilling Unit during the period.

4. It has been averred that the respondents on the basis of the communication dated 29.11.2019 started asking recovery and the petitioner feeling aggrieved by the recovery has approached this Court inter alia on the grounds that no show cause notice has been issued to him, which is against the principle of natural justice. Further, it has been averred

that the petitioner did not play fraud or made any misrepresentation to receive the amount and thus the action on the part of the respondents to recover the amount is illegal and void. It has also been averred that no inquiry was conducted against the petitioner and thus the action on the part of the respondents to make recovery is violative of Articles 14, 16, 19 and 21 of the Constitution of India.

5. The respondents filed reply to the petition and averred that the petitioner is estopped from filing the present petition due to his own conduct, deed and acquiescence. It has been admitted that the petitioner had retired from Government service on attaining the age of superannuation on 31.05.2009.

6. It has been averred that the Drilling staff of the respondent-Department is posted in different drilling units from time to time as per the requirement for the exploration works of minerals in the State of Himachal Pradesh. It has further been averred that as per Rule 73(1) of Supplementary Rules (Travelling Allowance Portion), the officers/officials posted out of permanent headquarters i.e. Shimla are eligible for TA/DA and other allowances for a period of 180 days as per the rates prevalent in permanent headquarters and

thereafter no TA/DA and other allowances are admissible to them as per the rates prevalent in permanent headquarter, rather they are entitled only for the allowances as per the rates fixed by the Government for that particular place/places of posting. It has also been averred that the petitioner and other similar situate persons were posted out of permanent headquarter i.e. in the Drilling Unit of the Geological Wing of the respondent Department, for exploration works of minerals. Since the petitioner worked at his place of posting for more than 180 days, as per Rule 73(1) mentioned above, the TA/DA was discontinued after 180 days but other allowances i.e. capital allowance, compensatory allowance, house rent allowance etc. were inadvertently paid to him as per the rates prevalent in permanent headquarter i.e. Shimla.

7. It has further been averred that while going through the audit/test check of the accounts of the office of the State Geologist, Geological Wing, Department of Industries, Shimla, H.P., for the period from 4/2014 to 11/2015, the Audit Party had noticed that two Nos. units/machines were deployed at Gumma, Tehsil Chopal for M/s India Cements and one at Dhara Badu area in District Mandi for M/s ACC Ltd. alongwith staff for investigation

work. It was revealed that the staff engaged with above units were paid TA/DA for 180 days and thereafter same was discontinued. Thereafter, they were paid TA/DA from new headquarter to old headquarter (i.e. new headquarter to Shimla). However, allowances such as capital allowance, HCA and HRA were being paid to them at the rates stationed at Shimla, which was irregular and in contravention of the Rules *ibid*. The matter regarding settling the audit para was taken up with the Finance Department of Government of Himachal Pradesh, however, the proposal was rejected. The Department is to recover the said allowances paid to the petitioner and recovery letter dated 29.11.2019 has rightly been issued.

8. I have heard the learned counsel for the parties and also perused the record carefully.

9. It is not in dispute that the petitioner did not make any misrepresentation or played fraud while receiving the amount, which was not admissible to him under Rule 73(1) of Supplementary Rules (Travelling Allowance Portion). It is also not in dispute that the petitioner had retired from a post, which is Class-III post.

10. From the reply filed by the respondents, it is clear that the amount of allowances paid to the petitioner was from

the period 2005 to 2009 and thus the overpayment of the amount, which is withheld, was paid to the petitioner during the last more than 10 years and that too, before his retirement.

11. The Hon'ble Supreme Court in **State of Punjab and others vs. Rafiq Masih (White Washer) and others**, (2015) 4 SCC 334, has held that in case there is no misrepresentation on the part of the employees while receiving amount, which was not permissible under law, the recovery cannot be made from such employees, who belong to Class-III and Class-IV service. Further, it has also been held that the recovery from employees, when the excess payment has been made for a period in excess of 5 years, before the order of recovery is issued, the same cannot be done.

12. In the present case, the petitioner was paid the capital allowance, HCA and HRA from the year 2005 to 2009 and the same came to be noticed only in the year 2015, when the inspection report was submitted by the Audit Party while conducting the audit for the period from 4/2014 to 11/2015. Since the petitioner did not misrepresent the respondents to receive the amount, and further he being Class-III employee and retired long back and also the amount paid was for a

period in excess of five years, no recovery can be made from him.

13. A similar issue had come up for consideration before a coordinate Bench of this Court in **CWPOA No.4320 of 2020**, titled, **Bihari Lal vs. State of Himachal Pradesh and another**, and after considering the judgment of the Hon'ble Supreme Court in **Rafiq Masih's** case (supra) and other judgments held that the State Authorities cannot withhold or recover the amount from employees belonging to Class-III and Class-IV who are due to retire within one year. In the present case, the petitioner has retired from service on 31.05.2009 and the impugned communication has been issued on 29.11.2019 to make recovery of the amount which was paid to the petitioner between 2005 to 2009.

14. Since a coordinate Bench of this Court has already taken a view, which is strictly in consonance with the law propounded by the Hon'ble Supreme Court, in the aforementioned case, the impugned action on the part of the respondents in making recovery of the amount of allowances from the petitioner after his retirement is totally illegal and against the law laid down by the Hon'ble Supreme Court in **Rafiq Masih's** case (supra).

15. Consequently, the present petition is allowed and the respondents are restrained to make any recovery from the petitioner in pursuance of the communication dated 29.11.2019 (Annexure P-1).

16. The petition is accordingly disposed of. No order as to costs. Pending application(s), if any, shall also stand disposed of.

27th July, 2026
(naveen)

(**Jiya Lal Bhardwaj**)
Judge