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HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition (S) No. 688 of 2017**

Raghunath Ram S/o Late Shri Gulbadan Ram, aged about 63 years, R/o Village Tapkara (Chainpur), Tahsil Farsabahar, District Jashpur, (Chhattisgarh)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Scheduled Caste & Scheduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The Commissioner, Department of Scheduled Caste & Scheduled Tribe Development Chhattisgarh, Raipur, (Chhattisgarh)
3. The Collector, (Scheduled Tribe Welfare Branch), District Jashpur, (Chhattisgarh)
4. The Joint Director, Treasury, Accounts & Pension, Ambikapur, District Surguja, (Chhattisgarh)
5. The District Education Officer, Jashpur, District Jashpur, (Chhattisgarh)
6. The Block Education Officer, Farsabahar, District Jashpur, (Chhattisgarh)

---- Respondents

For Petitioners:	Shri Harish Khuntiya, Advocate.
For Respondents/State:	Shri S. P. Kale, Dy. A.G.

Hon'ble Shri P. Sam Koshy, J**Order On Board****23.02.2017**

The present petition has been filed challenging the impugned order Annexure P-1 passed by the respondents making recovery of Rs.57,244/- from the pensionary benefits payable to the petitioner. The said recovery has been made on account of the alleged excess payment made to the petitioner while he was in service on account of wrong pay fixation.

2. Counsel for the petitioner submits that it is a case where the order of recovery has been passed without conducting any sort of enquiry and that there is no allegation of the petitioner having made misrepresentation or played fraud

for obtaining the said excess payment. He submits that if at all if the said amount has been received by the petitioner, the same was on account of the error on the part of the respondents for which the petitioner, much after his retirement, now, cannot be penalized by issuing the order of recovery. The issue involved in the present case is no longer *res integra* and it is squarely covered by the decision of the Supreme Court in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** reported in **2015 AIR SCW 501**.

3. State counsel, on perusal of the contents of the petition as well as the documents supported with it submits that the petitioner is covered by the decision of the Hon'ble Supreme Court in the case of Rafiq Masih (*supra*).

4. The law in respect of the recovery by now is well settled by a catena of decisions starting from 1995 SCC, Supl. (1) 18 JT 1995 (1) 24 in the case of Sahib Ram Vs. The State of Haryana and Others and the most recent being the case of State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. reported in 2015 AIR SCW 501, wherein it has been repeatedly and in very categorical terms held by the Supreme Court that in the event if any excess payment has been paid to an employee for no fault of the employee and the said amount has been paid to him without there being any misrepresentation or fraud played by the employee, the recovery of the said amount would be improper on the part of the employer. It has been held in paragraphs-11 & 12 in the case of Rafiq Masih (*supra*) as under:-

“11. Recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced

on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

“12. xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx

- (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.”

5. Thus, in view of the above given facts and also the decisions of the Hon'ble the Supreme Court, the present petition deserves to be and is accordingly allowed. The impugned order of recovery is set aside. It is ordered that the amount of recovery shall be refunded to the petitioner within a period of three months from the date of receipt of copy of this order.

Sd/-
(P. Sam Koshy)
J U D G E