

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1510 of 2017**

- Jawakim Xalxo S/o S. Xalxo, Aged About 42 Years Working As Peon, Government Middle School, Champa, Police Station Sanna, Tahsil Bagicha, 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 Block Education Officer, Bagicha, District Jashpur (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri CJK Rao and Shri Harish Khuntiya, advocates
For Respondents-State	:	Shri Satish Gupta, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****29/03/2017**

1. This petition has been filed assailing the impugned order Annexure P-1 passed by the respondents directing for recovery of certain excess payment made to the petitioner on account of fixation of pay scale from a wrong date.
2. Counsel for the petitioner submits that the petitioner before this Court is Class IV employee working as Peon who had been initially appointed as daily wage worker. Subsequently, his services were regularized vide order dated 04.10.2008 and he was also granted pay scale of Rs.2550-55-2660-

60-3200. However, subsequently, the impugned order of recovery has been passed stating that the petitioner was not entitled for the pay scale which had been granted to him from the date it has been granted but only prospectively. Counsel for the petitioner submits that it is a case where the wrong pay scale has been granted to the petitioner on account of the inadvertence on the part of the officers of the State Govt. It is not a case where the wrong pay scale has been obtained by the petitioner by playing any misrepresentation or fraud and that if at all the any excess amount has been received by the petitioner, the same was on account of the inadvertence on the part of the respondents for which the petitioner now after a long period, cannot be penalized by issuing the order of recovery. He further submits that this issue is squarely covered by a decision of this 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 the petition submits that the petition 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 is by now 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 **Rafiq Masih (supra)**, 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 judgment of **Rafiq Masih (supra)** as under:-

“11. Recovery of excess payment, 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. A perusal of the return filed by the respondents would also reveal that it is not the case of the State Government that the alleged wrong pay scale has been granted to the petitioner because of any misrepresentation or any fraud played by him. On the contrary, a perusal of the reply would give us an inference that it was an error on the part of the Officers of the

respondents for having granted wrong pay scale to the petitioner without verifying the rules so far as the entitlement of the petitioners is concerned.

6. Thus, in view of the above given facts and also the decisions of 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, if any recovered, shall be refunded to the petitioner within a period of three months from the date of receipt of copy of this order.

Sd/-

Judge

Prashant Kumar Mishra

Ashu