

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 3029 of 2015**

- Vijay Kumar Singh S/o Late Shri Ram Sharan Singh Thakur Aged About 60 Years Presently Working On The Post Of Forester R/o Thakur Para Kawardha P.S. Kawardha District- Kabirdham Chhattisgarh.

**---- Petitioner****Versus**

1. State Of Chhattisgarh Through - Secretary, Department Of Forest, New Mantralaya, P.S.- Mandir Hasaud, Naya Raipur, Distt. Raipur (Chhattisgarh)
2. The Principal Chief Conservator Of Forest, Arenya Bhavan Medical College Road, Raipur (Chhattisgarh)
3. The Conservator Of Forest At The Office Of Durg, Distt. Durg (Chhattisgarh)
4. The Divisional Forest Officer, Forest Division Kawardha Distt. Kabirdham (Chhattisgarh)

**----Respondents**

For Petitioner:

Mr. Ajit Singh, Advocate

For State :

Mr. Shashank Thakur, Government Advocate

**Hon'ble Shri Justice P. Sam Koshy****Order on Board****24.03.2017**

1. The challenge through the present Writ Petition is to the order dated 27.04.2015 and the consequential order of recovery being made from the monthly wages of the Petitioner.
2. The brief facts relevant for adjudication of the present case is that the Petitioner was appointed as Forest Guard on 05.07.1978 and in due course of time he was also promoted to the post of Forester in the year 2009. The Petitioner vide order dated 27.04.2015 issued with a letter intimating that the Petitioner has been inadvertently paid the benefit of one advance increment which was not proper and was

accordingly recalled. It was further ordered that the Respondent shall be entitled for recovering the said amount from the monthly wages of the Petitioner. Accordingly, it was ordered that for the first month there should recovery of Rs. 7318/- and rest of the amount shall be recovered in 10 equal monthly installment of Rs. 4000/- each, totaling Rs. 47318/-.

3. Learned Counsel for the Petitioner contended that the Petitioner in the instant case is a low paid employee in the Forest Department and that he is a Class - IV category employee and that excess money alleged to have been paid to the Petitioner was not on account of any misrepresentation or fraud committed by the Petitioner but it was on account of error at the hands of the Respondents and therefore the recovery could not have been ordered for.
4. The Counsel for the Petitioner submits that the Government has power for rectification of an error but that it does not mean that the excess amount paid on the inadvertence at the hands of the Respondent could be recovered. He further submits that the issue involved in the present case is no longer *res integra* and stands squarely decided by the decision of the Supreme Court in case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** reported in **2015 AIR SCW 501**.
5. Learned State Counsel on due verification of the facts does not dispute the facts narrated by the Petitioner so far as the recovery is concerned. Further, the State Counsel only added that since the Petitioner was continuing in

employment therefore the Respondent had all the rights for recovering the excess amount which stands paid to the Petitioner inadvertently. According to the State Counsel it is the right conferred upon the employer for recovering anything which has been paid in excess of what the employee is not legally entitled for.

6. Considering the total facts and circumstances of the case this Court is of the opinion that the issue involved in the case so far as recovery is concerned is no longer *res integra*. It has already been settled by the Supreme Court in series of decision right from **1995 SCC, Supl. (1) 18 JT 1995 (1) 24** in the case of **Sahib Ram Vs. The State of Haryana and Others** to the most recent case of ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.***
7. The Hon'ble Supreme Court has laid down broad guidelines, in respect of the situations under which the recovery can be made. The relevant portion of judgment in case of ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.*** is reproduced as under:-

**“18.** 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."

8. In view of the above authoritative decision of the Supreme Court, this Court is of the opinion that the grievance of the Petitioner squarely falls within the criteria and guidelines narrated in the Judgment of ***Rafiq Masih (Supra)***. The Petition thus deserves to be allowed.
9. Indisputably, the wrong fixation if at all has been made, was at the hands of the Respondents. The Petitioner cannot be blamed for that in any manner. There is no allegation of mis-representation or fraud played by the Petitioner in receiving the excess payment which has been

made. Under such circumstances all that the State can do is rectification of the error that has occurred. The State does not have power to recover the amount which has already been paid to the employees on account of the fault of the officers of the State Government.

10. Thus, the impugned orders dated 27.04.2015 stands quashed so far as the recovery is concerned. In addition what ever amount that has been recovered from the Petitioner by the Respondent shall also be released to the Petitioner forthwith preferably within a period of 90 days from the date of presentation of the certified copy of this Order.

11. It is made clear that quashing of order of recovery does not preclude the Respondents from making rectification of the erroneous fixation of pay made to the Petitioner.

12. With the aforesaid observation the Writ Petition stands allowed.

Sd/-

(P. Sam Koshy)  
**JUDGE**