

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.2147 of 2014**

- Ambrosh Toppo S/o Bhodri Toppo, (Caste Oroan) Aged About 61 Years Retd As Assistant Superintendent Land Record, Collectorate Ambikapur, Distt Surguja, R/o Village Fundul Dehari Patelpara, Near Oroan Complex, Post & Tah Ambikapur, Ps Gandhinagar, Civil & Revenue Distt Surguja, Cg

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue, Mantralaya, Mahanadi Bhawan, Naya Raipur, Civil & Revenue Distt Raipur, Cg
2. Collector Sarguja (Land Record), Ambikapur, Civil & Revenue Distt Surguja, Cg
3. Joint Director Treasury, Account & Pension, Sarguja Division, Ambikaur, Civil & Revenue Distt Surguja, Cg
4. District Treasury Officer, Ambikapur, Civil & Revenue Distt Sarguja, Cg

---- Respondents

For Petitioner	:	Shri Surfaraj Khan, Advocate
For Respondent/State	:	Ms. Sunita Jain, PL

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****16/08/2017**

The only issue arising for consideration in this petition is whether the recovery could be made after retirement, against the petitioner in respect of the amount, which is alleged to have paid in excess.

2. Learned counsel for the petitioner submits that in view of the recent pronouncement of the Supreme Court in the case of ***State of Punjab & Others vs. Rafiq Masih (White Washer), (2015) 4 SCC 334***, even if it is accepted that

the amount, which was paid to the petitioner was more than what he was entitled, after retirement, no recovery could be made from any Class III or Class IV employees, which has been paid in excess.

3. On the other hand, learned State counsel submits that the petitioner was wrongly paid higher pay, even though, he was not qualified in the departmental examination. This irregularity came to the notice of the authority at the time when the petitioner was retired and therefore, recovery proceedings were initiated. Earlier, when the petitioner filed writ petition, the same was allowed on the ground that opportunity of hearing was not afforded. The respondents, however, have now afforded opportunity of hearing and then pass the order.

4. There is nothing in the return of the respondents that while granting higher pay to the petitioner, no undertaking was taken from him. If that be so, in the opinion of this Court, case of the petitioner is squarely covered by the decision of the Supreme Court in the case of **Rafiq Masih** (supra), wherein Their Lordships in the Supreme Court summarized the principles with regard to recovery in a following manner:-

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."

5. Undisputedly, the petitioner happens to be a Class III employee, even if excess amount is paid wrongly, the said amount could not be recovered from him after retirement.

6. In view of foregoing, the impugned recovery order is hereby quashed. The petition is accordingly allowed.

SD/-
(Manindra Mohan Shrivastava)
Judge