

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2657 of 2015**

Hari Prasad Gupta S/o Late Shri Shankar Lal Gupta Aged About 52
Years Assistant Grade III, Forest Department, R/o Sevatatola
Dongargaon, District Rajnandgaon Chhattisgarh 491661

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

1. State Of Chhattisgarh Through Secretary, Forest Department
Mantralyaa, Mahandi Bhawan, Naya Raipur District Raipur
Chhattisgarh
2. Principal Chief Conservator Forest Aranya Bhawan, Jail Road,
Raipur Chhattisgarh
3. Divisional Forest Officer Rajnandgaon, District Rajnandgaon
Chhattisgarh

---- **Respondents**

For Petitioner : Mr. Anup Majumdar, Advocate

For State : Mr. Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order on Board****03/10/2017**

Heard.

1. After hearing learned counsel for the parties, I am of the view that the present case is squarely covered by the decision of the Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334**, wherein the Supreme Court held as below :

"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."

2. In the present case, the facts are that the petitioner is a Class-III employee and is working as Assistant Grade-III. It appears that the award was passed in favour of the petitioner which led to the reinstatement along with back wages. The petitioner was also regularized in service. It appears that at the time of regularization and fixation of pay, increment was erroneously added which led to payment of an excess amount of Rs.96,855/-. By impugned order dated 15.03.2012, an order has been passed for recovery.
3. Though learned State counsel is correct in submitting that the petitioner was erroneously granted excess amount which ought not to have been paid to him, in view of the authoritative pronouncement of the Supreme Court in the case of Rafiq Masih (supra), that the petitioner is a class-III employee and in the absence of there being any material to show that the petitioner had given any undertaking that the fixation is found to be erroneous, he would be liable to refund, in view of the aforesaid decision. Inescapable conclusion is that the recovery against the petitioner is

not permissible under the law though it would be a different matter that after 15.03.2012, the respondents may not pay the higher pay based on erroneous fixation. However, as far as recovery part is concerned, no recovery can be made.

4. To the extent indicated above, the petition is allowed in the manner that no recovery shall be made against the petitioner but this order shall not come in the way of proper fixation of pay.
5. It is informed that has already been done and the petitioner is prospectively getting less salary after the order was passed on 15.03.2012. If any recovery has been made pursuant to impugned order, the same shall be refunded to the petitioner.

Sd/-

(Manindra Mohan Shrivastava)

Judge