

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition (S) No.4819 of 2005**

Baleshwar Rai S/o Shri Rai, Teh. Gharghoda, District Raigarh (CG).

----Petitioners**Versus**

1. Secretary through Panchayat & Rural Development Department, DKS Bhawan, Raipur (CG).
2. Collector, Raigarh, Raigarh (CG).
3. Auditor General Gwalior (MP).

---- Respondents

For petitioner	:	Shri Maneesh Sharma, Advocate.
For respondent-State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****26.03.2018.**

1. The petitioner seeks to impugn the order dated 03.01.1995 (Annexure A/1) whereby an amount of Rs.11,342/- was recovered from the retiral dues payable to the petitioner.
2. The counsel for the petitioner submits that the petitioner was a low paid employee working as Gram Sahayak. He retired prior to 1995 and after retirement while settling the retiral dues, the respondents have issued an order of recovery without any intimation, show cause notice and departmental enquiry. Nor was the petitioner at any point of time taken in confidence before issuance of recovery order. He submits that the department had unilaterally deducted an amount of Rs.11,342/- from his retiral dues and had issued a receipt in this regard (Annexure P/1).
3. The petitioner immediately challenged the order of recovery before the State Administrative Tribunal (SAT) where the case was originally

registered as OA No.493 of 2002 and subsequently the matter stands transferred to this court on the abolition of the SAT and has been registered as WPS No.4819 of 2005.

4. The petitioner submits that the issue involved in the instant case is squarely covered by the decision of the Supreme Court in case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. 2015 (4) SCC 334. He further submits that similar writ petitions have already been decided both by the SAT as well as by this court. He also refers to order passed by the SAT in OA No.856 of 1992 decided on 28.01.2000 and order dated 14.12.2012 passed by this High Court in WPS No. 4818 of 2005 and thus prayed for petition be also allowed and the amount which has been recovered be refunded back with interest.
5. The State counsel opposing the petition submits that it is a case where while settling the retiral dues of the petitioner it was detected that the petitioner was paid erroneously Rs.20/- per month towards selection grade which otherwise he was not entitled for and on the basis of erroneous fixation of pay, the petitioner has received excess amount of Rs.11,342/- which has been recovered by the State. Therefore, it cannot be said to be in any manner erroneous.
6. Indisputably, the petitioner in the instant case is a Class-III employee. The said order of recovery has been passed after the retirement of petitioner. The respondents have not alleged any misrepresentation or fraud played by the petitioner while granting erroneous fixation of pay. The error whatsoever was at the hands of the office of the

respondents.

7. Given the aforesaid facts and circumstances of the case, this court has no hesitation in reaching to the conclusion that the case of the petitioner squarely falls within the parameters/situations which have been envisaged by the Supreme Court in case of Rafiq Masih (Supra) in which the Supreme Court has held that the recovery would be impermissible under law.
8. The writ petition therefore deserves to be and is hereby allowed. The amount recovered by the State shall be refunded back to the petitioner within a period of 90 days from today. The said amount shall also carry interest @ 9 percent from the date of deduction/recovery.
9. The petition stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

inder