

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2144 of 2016**

Kumar Anand Dongaonkar S/o Late Shri L. V. Dongaonkar, Aged About 62 Years, R/o Maharaj Chowk Behind Bank Of India, Tehsil Durg, Distt. Durg, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Fisheries, Mahanadi Bhawan, New Raipur, Chhattisgarh
2. Joint Director, Treasury And Account, Pension Raipur Chhattisgarh
3. Director, Directorate Of Fisheries, New Raipur Chhattisgarh
4. Assistant Director, Fisheries, District Balod, Chhattisgarh

---- Respondents

For Petitioner	:	Shri C. Jayant K. Rao, Advocate
For State	:	Shri D. Wankhede, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****14.09.2018**

The challenge in the present writ petition is to the order dated 17.05.2016 whereby the respondents have issued an order of recovery of an amount of Rs.1,82,732/- from the petitioner.

2. Brief facts of the case are that the petitioner retired from service of the respondents as an Assistant Fisheries Officer w.e.f. 30.04.2016. In the year 2012, the petitioner received a pay band/pay scale as per the circular issued by the State Govt. on 18.09.2012. Post retirement, the respondents have issued the impugned order dated 17.05.2016 holding that the

petitioner was in fact not entitled for the pay band which was awarded to him as per the circular dated 18.09.2012 and therefore have ordered for recovery of Rs.1,82,732/-. It is this order of recovery which is under challenge in the present writ petition.

3. The contention of counsel for the petitioner is that the impugned order has been passed without granting an opportunity of hearing to the petitioner and as such it is per se illegal and in violation of the principles of natural justice. He submits that before issuance of the impugned order, the respondents at least should have given an opportunity of explanation to the petitioner to explain whether it would be applicable or not. It was contended by the counsel for the petitioner that the impugned order of recovery is also impermissible under law for the reason that the Supreme Court has in very categorical term held said recoveries to be impermissible under law in its judgment delivered in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** reported in **2015 AIR SCW 501**

4. State counsel, on the contrary, opposing the petition submits that since the order of recovery was immediately after his retirement while processing his case for retiral dues, the judgment of the Hon'ble Supreme Court in the case of Rafiq Masih (supra) may not be applicable. He submits that ultimately it was an erroneous fixation of pay and by virtue of which certain excess payment was paid to the petitioner which is now being ordered to be recovered. Therefore, the same cannot be said to be either arbitrary or bad in law as the State has all the power for rectification of an error and for recovering the loss caused. Thus, prayed for rejection of the writ petition.

5. Having heard the contentions put forth on either side and on perusal

of the record, the aforesaid contents made in the preceding paragraphs gives an admitted position of the petitioner retiring under the respondents on 30.04.2016 from the post of Assistant Fisheries Officer. The impugned notice dated 17.05.2016 pertains to an erroneous fixation of pay granted to the petitioner by the respondents w.e.f. July 2012 on wards i.e. 4 years prior to the date of retirement. Moreover, there is no allegation of the petitioner having misrepresented or having played fraud upon the respondents for getting the said erroneous pay scale. It is also not in dispute that the impugned order has been passed after retirement of the petitioner and that before issuance of the impugned order, no opportunity of hearing was granted to the petitioner.

6. Now if we look at the situation which has been enumerated by the Supreme Court in the case of Rafiq Masih (supra), it would clearly reveal that the circumstances mentioned in the preceding paragraphs so far as the admitted factual matrix of the case is concerned are situations under which the Hon'ble Supreme Court has held recovery orders to be impermissible under law.

7. In the light of the judgment of the Supreme Court in the case of Rafiq Masih (supra) and also taking note of the fact that the petitioner being a retired employee and that before issuance of the notice no opportunity of hearing or explanation being provided to the petitioner, the impugned order is liable to be held as bad in law and the same deserves to be and is accordingly set aside/quashed.

8. However, the respondents would be at liberty to carry out any rectification of the pay scale of the petitioner if it has been erroneously granted to him. Before any such rectification is carried out by the

respondents, they shall provide an opportunity of hearing to the petitioner. However, so far as the recovery part is concerned, the respondents would not be entitled for initiating any recovery for any excess amount paid.

9. With the aforesaid observation, the writ petition stands disposed of.

**Sd/-
P. Sam Koshy
Judge**