

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 2219 of 2012**

K. K. Pandey, aged about 50 years, S/o late Shri R. P. Pandey, Sub Inspector "M" Office of District Police, Korba, R/o MIG-II-86 R. P. Nagar, Korba (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary Finance, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh
2. Secretary, Department of Home Affairs, Police Department, DKS Bhawan, Raipur, Chhattisgarh
3. The Director General of Police, Police Head Quarter, Raipur (CG)
4. I. G. (Administration), Police Head Quarters, Raipur, Chhattisgarh
5. The Director, (Treasury, Accounts and Pension), Raipur (CG)
6. Superintendent of Police Korba (CG)

---- Respondents**Writ Petition (S) No. 2220 of 2012**

P. S. Netam, aged about 46 years, S/o late Shri B. R. Netam, Subedar "A" Office of District Police, Korba, R/o Balco Nagar, Korba (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary Finance, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh
2. Secretary, Department of Home Affairs, Police Department, DKS Bhawan, Raipur, Chhattisgarh
3. The Director General of Police, Police Head Quarter, Raipur (CG)
4. I. G. (Administration), Police Head Quarters, Raipur, Chhattisgarh

5. The Director, (Treasury, Accounts and Pension), Raipur (CG)
6. Superintendent of Police Korba (CG)

---- Respondents

For Petitioner	:	Shri Syed Ishhadil Ali on behalf of Ms. Naushina Ali, Advocate
For Respondent/State	:	Shri S. P. Kale, Dy. Advocate General

Writ Petition (S) No. 2246 of 2012

1. Anand Tasia, aged about 56 years, D/o Luese Kerketta, working as Subsedar (Ministerial) office of the Superintendent of Police Radio Bhilai, Zone Bhilai, District Durg (CG)
2. Suresh Hariharano, aged about 54 years, S/o Shri Kunjbihari Lal, working as Sub Inspector (Ministerial) Office of the Superintendent of Police Radio Bhilai, Zone Bhilai, District Durg (CG)
3. Ku. Seema Pillai, aged about 34 years, D/o Shri P.G.N. Pillai, working as Assistant Sub Inspector (Ministerial) office of the Superintendent of Police Radio Bhilai, Zone Bhilai, District Durg (CG)
4. Ku. Bindia Kawre, aged about 33 years, D/o Shri Tandan Lal Kawre, working as Assistant Sub Inspector (Ministerial) office of the Superintendent of Police Radio Bhilai, Zone Bhilai, District Durg (CG)
5. Shukdev Sharma, aged about 60 years, Son of late Shri Ram Janam Sharma, working as Head Constable (Ministerial) office of the Superintendent of Police Radio Bhilai, Zone Bhilai, District Durg (CG)
6. Pramod Kumar Verma Son of Ram Kripal Verma, aged about 41 years, working as Constable (Ministerial) office of the Superintendent of Police Radio Bhilai, Zone Bhilai, District Durg (CG)
7. Rammasre Sharma, aged about 51 years, Son of Shri Nachkau Ram Sharma, working as Constable (Ministerial) office of the Superintendent of Police Radio Bhilai, Zone Bhilai, District Durg (CG)

---- Petitioners

Versus

1. State of Chhattisgarh through the Secretary, Home Department, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh
2. Secretary, Department of Home Finance and Treasury, DKS Bhawan, Raipur (CG)
3. Director General of Police, Head Quarter, Raipur (CG)
4. Inspector General of Police, Administration, State of Chhattisgarh, Raipur (CG)
5. Superintendent of Police (Radio) Bhilai Zone, Bhilai, District Durg (CG)

---- Respondents

For Petitioners	:	Shri Tarun Dansena, Advocate
For Respondent/State	:	Shri S. P. Kale, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy

Order On Board

17/07/2018

These are three writ petitions wherein the challenge is to a common order of recovery being issued at the instance of the Superintendent of Police of the concerned district in each of the cases.

2. Since the facts and grounds in the three writ petitions are almost similar, this Court proceeds to decide the three writ petitions by a common order.

3. The petitioners in all the three writ petitions have been found to have received certain excess payment which they were not otherwise entitled for under the service rules. In WPS Nos. 2219/12 and 2220/12, the petitioners therein have been given certain benefits as recommended by the Bramhaswaroop Committee whereas they were not entitled for the pay scale which they have otherwise been granted. The petitioners in WPS

No.2246/12 have been given certain erroneous pay scale which they too were not entitled for. It is the order of recovery in all the three cases which is under challenge.

4. So far as rectification of the error is concerned, the petitioners are not aggrieved of the same but are aggrieved only to the extent of the authorities initiating recovery proceedings against them. According to the counsel for the petitioners, it is a case where the petitioners are not responsible for erroneous fixation of pay which has been paid to them. It is the contention of the counsel for the petitioners that whatever excess amount the petitioners have received on account of wrong fixation of pay is on account of the fault on the part of the Officers under the respondents who have approved the said pay scale which according to the respondents have been wrongly paid to the petitioners in excess to what they were otherwise entitled for. According to the petitioners, it is a case where before issuance of the appropriate order, the respondents were required for following the basic principles of natural justice in as much as at least an opportunity of hearing should have been granted to the petitioners and having not done so, the order of recovery is liable to be set aside by this Court. Counsel for the petitioners relied upon the decision of the Supreme Court in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** reported in **2015 AIR SCW 501** so far as the recovery is concerned.

5. Per contra, counsel appearing for the respondent/State submits that it is a case where the petitioners in two of the writ petitions were in fact working as Ministerial staff and it is their note sheet which was approved by the Superintendent of Police on the basis of which the petitioners have been paid certain excess payment. According to the State counsel, the

respondents having come to know about the erroneous fixation of pay made to the petitioners have issued the impugned orders and the same cannot be found fault with for the simple reason that the petitioners cannot be permitted to get something which they were not otherwise entitled for. Since all the petitioners were still in service, the respondents issued the order for recovering the excess payment which was paid to the petitioners. He submits that the excess payment made to these persons was also on their preparation of a note sheet which was subsequently accepted and approved by the SP and therefore, it is the petitioners' who were responsible for the erroneous benefit which otherwise they were not entitled for. Therefore, the petitioners cannot claim the benefit of protection as is envisaged under the judgment of the Supreme Court in the case of Rafiq Masih (supra). He submits that it is also not a case where the petitions are low paid employee for the State Government not to initiate recovery proceedings. Thus, prayed for rejection of the petition.

6. So far as the law in respect of the action of recovery being initiated by the State Govt. is concerned, it is no longer res integra right from the earlier decision of the Supreme Court starting from the case of **Sahib Ram Vs. The State of Haryana and Others** reported in **1995 SCC, Supl. (1) 18 JT 1995 (1) 24** up till the recent decision of the Supreme Court in the case of Rafiq Masih (supra) which has been time and again reiterated by the Supreme Court as also by a catena of decisions by all the High Courts including by this High Court that any action which entails a civil consequence, it is mandatory on the part of the respondent State to at least issue the concerned employee with a show cause notice. The reason behind this is that an order having a civil consequence is passed against an

employee and therefore, he should be provided with an opportunity to explain to the authorities concerned as to whether he is entitled for the said benefit or not and also whether he was at fault for drawing of the said benefit.

7. In the instant case apparently from the three orders under challenge it does not reflect that an opportunity of hearing was given to any of the petitioners before the impugned orders were passed. Considering the fact that the petitioners in all these three writ petitions are still in service of the respondents, the impugned orders of recovery on account of the same having been issued without complying the basic principles of natural justice deserve to be and are accordingly set aside. Reserving the right of the State Government for initiating appropriate proceedings by giving an opportunity of hearing to the petitioners, the authorities, if they are not satisfied with the explanation so given by the petitioners, can issue appropriate order for recovering the excess amount if any paid to the petitioners.

8. The impugned orders in all the 3 writ petitions thus stand set aside. The three writ petitions stand allowed with the liberty given to the State Government as aforementioned.

**Sd/-
(P. Sam Koshy)
JUDGE**