

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.928 OF 2012**

G.K. Fatnani S/o M.K. Fatnami, aged about 54 years, R/o Agyeynagar,
Bilaspur Distt. Bilaspur C.G.

...Petitioner(s)

Versus

1. State Of Chhattisgarh through Secretary, Water Resources Department, DKS Bhawan, Raipur District Raipur (CG).
2. Executive Engineer Water Resources Division, Kota, Distt. Bilaspur C.G.
3. Executive Engineer, Kharang Water Resources Division, Bilaspur Distt. Bilaspur C.G.
4. Joint Director, Kosh, Lekha And Pension, Bilaspur C.G.

... Respondent(s)

For Petitioner	:	Shri Manoj Paranjpe, Advocate.
For Respondent-State	:	Shri RN Pusty, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05.10.2018

1. The challenge in this petition is to the order dated 03.02.2012 (Annexure P/1) whereby the respondents have issued an order of recovery of an amount of Rs.1,18,793/- which according to the State, the petitioner was erroneously paid on account of wrongful granting two advance increments on his obtaining qualification of M.A.(History).
2. This writ petition has been filed in the year, 2012 and the petitioner had obtained interim order on 28.02.2012 so far as recovery part is concerned and since then the recovery part is stayed.
3. The only issue is whether the notice of recovery would be sustainable or not.
4. So far as factual matrix of the case is concerned, it is undisputed that the petitioner working on the post of Assistant Engineer under

the respondents obtained qualification of M.A. (History). The State Govt. granted two annual increments to the petitioner vide order dated 15.09.2000 and the petitioner enjoyed the benefit of that advance increments till the impugned order was passed on 03.02.2012. While passing the said order, the respondents reached to the conclusion that the petitioner is not entitled for two advance increments and therefore, they have withdrawn the said benefits and have also at the same time ordered for recovering the two advance increments paid to the petitioner between July, 2009 to December, 2009.

5. The contentions of the petitioner is that for the purpose of granting of said increments, there has been no mis-representation or fraud played by the petitioner. The said increments have been paid after the same was duly sanctioned by the State and it is the fault of the respondents for having granted the said benefits to the petitioner. Therefore, the respondents would not be permitted to recover the benefits which has already been enjoyed by the petitioner. He further submits that so far as rectification part of the error is concerned, the same has not been questioned by the petitioner and he has not challenged the same but he confines his claim so far as the recovery part is concerned.
6. So far as granting two annual increments that too on being sanctioned by the State is not in dispute. Further, it is not a stand of the State that there has been any mis-representation or fraud played by the petitioner for obtaining said increments. Therefore, this court is of the opinion that the case of the petitioner stands fully protected

by the judgment of Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334, wherein it has been categorically held that if the excess amount has been paid to the employee for no fault of his, it becomes impermissible under the law for the respondents to recover the said erroneous excess payment made.

7. Given the aforesaid factual matrix of the case, this court has no hesitation in holding that the order of recovery issued against the petitioner is one which is impermissible under law as per the judgment of the Supreme Court in the case of Rafiq Masih (Supra) and as such the said impugned recovery notice is unsustainable. Accordingly, the impugned order dated 03.02.2012 (Annexure P/1) deserves to be and is hereby set aside.
8. The petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy
Judge