

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5797 of 2018**

Onkar Prasad Mandavi S/o Late Shri Sadan Singh Aged About 51 Years Assistant Grade III, Office Of Assistant Commissioner Tribal Development District Durg, Chhattisgarh. In Attachment Working Under Assistant Commissioner Tribal Development District Balod, Chhattisgarh.

---- Petitioner**Versus**

1. State Govt. Of Chhattisgarh Through The Secretary, Tribal Development Departt. Ministry Mahanadi Bhawan, P. S. Rakhi, New Raipur, Chhattisgarh.
2. Divisional Joint Director Treasury Accounts And Pension, Division Durg, Chhattisgarh.
3. Collector (Tribal Development Branch) Durg, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Mr. Dheeraj Wankhede, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/09/2018**

1. With the consent of the parties, the writ petition is finally heard and decided.
2. The challenge in the present writ petition is to the order Annexure P/1 dated 26.06.2018, passed by the Assistant Commissioner, Adiwasi Vikas Department, Durg. Vide the said impugned order the respondents have passed an order of recovery of an amount of Rs.4,88,977/- from the petitioner to be recovered in 70 installments from the monthly salary payable to the petitioner. The said recovery notice is on account of certain excess amount of wages paid to the petitioner on account of erroneous pay fixation.
3. At the outset, it is reflected that the petitioner working as an Assistant Grade-III, which is a class-III post and the alleged

erroneous wrong fixation of pay for the first time occurred on 01.04.2006 i.e. a period of about 12 years back.

4. Applying the law laid down by the Hon'ble Supreme Court in the case of "***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.***" reported in ***2015 AIR SCW 501*** where the Hon'ble Supreme Court in very categorical terms has held that the recovery of the excess amount paid to an employee is of a period more than 5 years prior to the issuance of the recovery notice and also recovery against class-III and class-IV low paid employees are impermissible under law. The recovery in the present case also could not have been issued.
5. Applying the judgment of the Hon'ble Supreme Court in the case of "Rafiq Masih" (supra), the recovery notice so far as the excess payment is concerned in the present case is not sustainable and the same deserves to be and is accordingly set-aside/quashed.
6. However, in case of any erroneous fixation of pay is concerned, the least that is excepted is that the respondents may issue a notice to the petitioner and after giving him an opportunity to explain with regard to the fixation of pay is concerned, the respondents would be at liberty to pass a suitable order, so far as grant of proper fixation is concerned.
7. Whatever amount, which has been recovered by the respondents meanwhile, shall be refunded to the petitioner forthwith.
8. With the aforesaid observations, the present writ petition stands partly allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge