

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5856 of 2018**

Aditya Hiradhar S/o Late Shri M. K. Hiradhar Aged About 54 Years
Occupation Deputy Superintendent Of Police (SIB), Under Special
Intelligence, Branch Police Head Quarter, Raipur, District Raipur,
Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary Home Police Affairs And Finance Department Mahanadi Bhawan, New Mantralaya, Raipur, Chhattisgarh.
2. The Director General Of Police Police Head Quarter, Raipur, District Raipur, Chhattisgarh.
3. The Director Treasury, Account And Pension, Raipur, District Raipur, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Prakash Tiwari, Advocate
For State	:	Mr. Syed Majid Ali, Dy. G.A.

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

1. The challenge in the present writ petition is to the order Annexure P/1 dated 03.08.2018, passed by the Superintendent of Police, Special Intelligence Branch, Police Head Quarter, Raipur. Vide the said impugned order the respondents have passed an order of recovery of an amount of Rs. 2,75,000/- from the petitioner from the monthly salary payable to the petitioner and also reduced the sanctioned basic pay of Rs.22680/- to Rs.20420/-. The said recovery notice is on account of certain excess amount of wages paid to the petitioner on account of erroneous pay fixation.
2. At the outset, it is reflected that the petitioner working as a Deputy Superintendent Of Police (SIB), which is a class-II 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.

3. 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, if it has been made prior to 5 years prior to the issuance of the recovery notice and the excess amount has been made for no fault of the employee or on any misrepresentation made by the employee, the recovery of the same shall be impermissible under law. The recovery in the present case also thus could not have been issued.
4. 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 impugned order Annexure P/1 dated 03.08.2018 deserves to be and is accordingly set-aside/quashed.
5. 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.
6. Whatever amount, which has been recovered by the respondents meanwhile, shall be refunded to the petitioner forthwith.
7. With the aforesaid observations, the present writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge