

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6726 of 2018**

A.K. Chaurasiya S/o Shri Hardayal Aged About 55 Years Posted As Assistant Fisheries Officer, Fish Seed Farm Chhind, Sarangarh, Under Assistant Director Fisheries, Raigarh, District- Raigarh, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Principal Secretary Fisheries Department, Mahanadi Bhawan, New Raipur, Chhattisgarh.
2. The Assistant Director Fisheries Department, Raigarh, District- Raigarh, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Rakesh Pandey, Advocate
For State	:	Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****09/10/2018**

1. With the consent of the parties the matter was heard finally at the motion stage.
2. The challenge in the present writ petition is to the order Annexure P/1 dated 20.12.2017, whereby the respondents have issued for an order of recovery to the tune of Rs.1,47,895/- from the salary of the petitioner.
3. The said recovery has been made on account of certain excess payment made to the petitioner during the period February, 2008 to December, 2015. The excess payment was on account of some erroneous fixation being granted to the petitioner. Though the impugned order has been passed on 20.12.2017, however it was only vide Annexure P/3 dated 19.02.2018 a consent has been sought from the petitioner for permitting to make the recovery from the salary of the petitioner. However, according to the petitioner till date neither has he

given any consent, nor have the respondents initiated the recovery proceedings.

4. The contention of the petitioner is that the said order of recovery is per se illegal and impermissible under law in the light of the judgment of 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***. The Hon'ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery is totally impermissible under law. The situations as envisaged in the said judgment are as under :

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

5. The ground of challenge by the petitioner is that the said alleged erroneous fixation of pay granted to the petitioner was not on account

of any misrepresentation or fraud played by the petitioner. The same has been given to the petitioner, if at all, on account of the fault on the part of the officers of the respondents. He further submits that the same is also not permissible under law for the reason that the excess payment so made was of the period starting from February, 2008, as such it is prior to 5 years time from the date order of recovery Annexure P/1 was passed. For this reason also the respondents would not be in a position to recover the excess payment from the petitioner.

6. The State counsel on the contrary opposing the petition submits that since the petitioner is already in service, he has been issued with a letter for giving undertaking for recovery in the same as the petitioner has been paid something in excess, which he is not otherwise entitled for. Therefore the petitioner cannot be permitted to retain the said amount and it is on this contest that the impugned order Annexure P/1 has been passed. She further submits that it is also not a case where it can be said to be a belated claim for the reason that last excess amount paid to the petitioner was of December, 2015 which is within 5 years from the date of the order of recovery made and for this reason also the judgment of “**Rafiq Masih**” (supra) cannot be applied for rescue of the petitioner.
7. Having considered the contentions put forth on either side and on perusal of the record admittedly the petitioner has been paid some excess amount from the period February, 2008 to December, 2015. It is also not in dispute that the said excess payment was made on account of some error on the part of the respondents. From 2008 till the date of recovery it would reveal that the excess payment was first

made to the petitioner much about 10 years prior to the date of the order of recovery. Undisputedly, before issuance of the impugned order no opportunity of hearing was granted to the petitioner.

8. Given the said facts, this Court is of the opinion that applying the judgment of the Supreme Court in the case of Rafiq Masih (supra), the impugned order of recovery is bad in law and the same deserves to be and is accordingly set aside.
9. The writ petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved