

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 7455 of 2018**

Devsingh Sahu S/o Late Ramdayal Sahu, Aged About 55 Years,
 Posted As Peon, R/o - Potiyakal, Ward No. 54, Shivmadinr Gali Dug,
 Police Station - Poolgaon, District - Durg, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Technical Education, Indrawati Bhawan, New Raipur, District - Raipur, Chhattisgarh
2. Directorate Of Teaching Education, 9th Floor, Third Division, Hod Bhawan (Indrawati Bhawan) New Raipur, District - Raipur, Chhattisgarh
3. Accountant General, Office Of Accountant General Pandri, Raipur, Chhattisgarh
4. Principal, Uday Prasad Uday Government Polytechnic Durg, District - Durg, Chhattisgarh
5. Joint Director, Treasury Accounts And Pension Durg, District - Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Smt. Fouzia Mirza, Advocate
For Respondents	:	Shri Majid Ali, Dy. G.A. and Shri R. K. Kesharwani, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****14.11.2018**

The challenge in the present writ petition is to the order Annexure P-1

dated 22.11.2017 whereby the respondents have ordered for recovery of an amount of Rs.1,12,741/- from the wages of the petitioner at 36 installments of Rs.3,000/- and one installment of Rs.1741/-. The said recovery has been made in respect of an excess payment made on account of an erroneous fixation of pay granted to the petitioner way back on 31.10.2005.

2. The petitioner substantively holds the post of Peon and is working under respondent no.4. While granting the benefit of 6th pay scale, the petitioner was erroneously given a wrong fixation which was detected recently after about more than 12 years and the impugned order has been passed.

3. Counsel for the petitioner submits that the said order of recovery is bad in law in the light of the judgment 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**. wherein it has been specifically held by the Supreme court that such recovery orders would be impermissible under law. She submits that all the situations which have been narrated in the said judgment applies so far as the petitioner is concerned and the impugned order deserves to be set aside/quashed. She further submits that even otherwise the impugned order is bad in law for the reason that the same has been passed in utter violation of the basic principles of natural justice in as much as no opportunity of hearing was granted to the petitioner before the impugned order was passed.

4. State counsel, however, opposing the petition submits that the petitioner is still in employment therefore when the error was detected, the respondents issued the impugned order for recovering the said excess amount with easy installments and therefore there is no illegality and as

such the petition deserves to be dismissed.

5. Having heard the contentions put forth on either side and on perusal of the record it would be relevant at this juncture to refer to the situations narrated in the judgment of the Supreme Court in the case of Rafiq Masih (supra) wherein the Supreme Court has held that recoveries under such situations would be impermissible under the law. It has been held in paragraphs-11 & 12 in the case of Rafiq Masih (supra) as under:-

“11. Recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

“12. xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx

(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.”

6. Considering the aforesaid situations if we look into the facts of the present case, it would reflect that undisputedly the petitioner is a Class-IV employee. It is also not in dispute that the erroneous fixation of pay given to the petitioner was on account of the error on the part of the respondents and not on account of any misrepresentation made by the petitioner. It would also reflect that the alleged erroneous fixation was first paid to the petitioner more than 12 years ago.

7. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that the present writ petition is squarely covered by the judgment of the Supreme Court in the case of Rafiq Masih (supra) and the impugned order is not sustainable and the same deserves to be and is accordingly quashed.

8. As a consequence, the petitioner would be entitled for refund of the entire amount that has been recovered till now from him. The recovered amount be paid to the petitioner at the earliest preferably within a period of 4 months from the date of receipt of certified copy of this order.

9. The writ petition accordingly stands allowed.

**Sd/-
P. Sam Koshy
Judge**