

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 295 of 2019**

Baidnath Tiwari S/o Shri Shiv Prasad Tiwari, Aged About 64 Years,
R/o Ward No. - 42, Basantpur, Rajiv Nagar, Rajnandgaon, Police
Station And District – Rajnandgaon, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through - Secretary, Home Department,
Mahanadi Bhawan, Police Station - New Raipur, District - Raipur
Chhattisgarh
2. Director General Of Police, Police Trade Quarters, Atal Nagar,
Raipur, District – Raipur, Chhattisgarh
3. Superintendent Of Police, Police Training School, R. K. Nagar,
Rajnandgaon, Police Station And District – Rajnandgaon,
Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Vaibhav A. Goverdhan, Advocate
For State	:	Mr. Salim Kazi, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

17/01/2019

The challenge in this writ petition is to the order Annexure P-1 dated 10.12.2018 whereby the respondents have issued an order of recovery of an amount of Rs.1,05,706/- from the retiral dues of the petitioner. The recovery so made is on account of erroneous payment of the allowance payable to the petitioner for serving in naxalite area.

2. The contention of the counsel for the petitioner is that the petitioner has already retired from service w.e.f. 31.12.2016 and that the said benefit has been extended to various employees and that there is no mis-

representation or fraud played by the petitioner for obtaining the the said allowance. He further submits that the petitioner was a Class-III employee. The said allowance was paid to the petitioner right from 2013 onwards and it is now after the petitioner was retired, the respondents have taken a decision holding that the petitioner is not entitled for the said allowance. Further, the said order of recovery is bad in law in the light of the judgment of the Supreme Court in case of **State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334.**

3. The State counsel opposing the petition submits that the impugned order of recovery reflect that there was some undertaking given by the petitioner in the year, 2013 itself when the allowance was released and therefore if now the Department has found that the petitioner has been erroneously granted the said allowance and they have issued a recovery order, the petitioner should not have any grievance. Thus, prayed for rejection of the petition.

4. Having heard the counsel on either side and on perusal of record, the undisputed fact is that the said allowance has been paid to the petitioner and many other similarly placed employees. The said allowance has been paid to the petitioner right from 2013 onwards. The decision of the State Govt. that the petitioner has been wrongly paid the said allowance was subsequent to the petitioner's having superannuated from service. The decision with regard to dis-entitlement of the said allowance was taken by the State on 07.09.2018.

5. It is also not a case of the State that the said allowance has been paid to the petitioner on account of any mis-representation or fraud played by the petitioner, but on the contrary, has been paid erroneously at the hands of the officers of the respondents.

6. Given the said facts, this Court is of the opinion that the case of the petitioner would squarely fall within the situation which are referred to by the Supreme Court in case of Rafiq Masih (Supra) and in the light of the decision of the Supreme Court such recovery becomes impermissible under the law. For ready reference, the situations mentioned in the said judgment are reproduced herein as under :

“18.. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

“(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.”

7. If we consider the facts of the present case with the situations narrated by the Supreme Court in the preceding paragraph, it would reveal that, admittedly the petitioner is Class-III category employee. The undisputed fact also is that the said erroneous allowance has not been made on account of any misrepresentation or any act on the part of the

petitioner, but the same has occurred only on account of mistake, if any, committed by the respondents.

8. 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 10.12.2018 (Annexure P/1) so far as the petitioner is concerned deserves to be and is hereby set aside/quashed. The amount has been retained by the respondents, the same is directed to be released to the petitioner forthwith preferably within a period of 3 months from the date of receipt of the certified copy of this order.

9. With the aforesaid observations, the writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge