

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 780 of 2019**

Nanki Dau Rathore S/o Late Shri Bajrangi Rathore, Aged About 63 Years, R/o Village And Post Nandour Kala, Tahsil And Police Station Sakti, District - Janjgir Champa, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of Home / Police, Mahanadi Bhawan, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District Raipur, Chhattisgarh
2. Director General Of Police (DGP) Police Head Quarter PHQ, Near Mahanadi Bhawan, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur District Raipur, Chhattisgarh
3. Inspector General Of Police (IGP) Office Of Inspector General Of Police, Bilaspur, District – Bilaspur, Chhattisgarh
4. Superintendent Of Police (SP) Office Of Superintendent Of Police (SP) Janjgir-Champa, District - Janjgir - Champa Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Abhishek Pandey and Shri Santosh Pandey, Advocates
For State	:	Mr. Saleem Kazi, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/02/2019**

1. The challenge in the present writ petition is to the action on the part of the respondents in passing an order of recovery on 15.11.2016 recovering an amount of Rs.2,09,671/- from the retiral dues payable to the petitioner.

2. The brief facts relevant for adjudication of the writ petition are that the petitioner working as a Constable (Class-III post) under the respondents retired from service w.e.f. 28.02.2017. After his retirement from service, the respondents are said to have recovered an amount of Rs.2,09,671/- from the retiral dues that the petitioner was entitled for. The petitioner was never served with a notice before the recovery order was passed. The petitioner subsequently, moved an application under RTI and obtained information Annexure P-2 whereby he has been informed that he was paid certain excess amount on account of erroneous fixation of pay w.e.f. 01.01.1996 onwards. This amount was detected by the respondents at the time of his retirement i.e. after more than 21 years from the date the initial error crept in.
3. According to the petitioner, the said recovery is totally 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***. It is the contention of the counsel for the petitioner that the impugned order is also bad for the reason that the same has been issued without affording any opportunity of hearing to the petitioner and as such it is violative of the principles of natural justice.
4. State counsel, on the contrary justifying the action on the part of the respondents, submits that when the petitioner was to retire in February, 2017, his settlement was being done and at that time it was detected that the petitioner has been paid certain excess amount by way of erroneous fixation of pay w.e.f. 01.01.1996 and

then it was calculated and found that the petitioner was paid an amount of Rs.2,09,671 in excess what he was otherwise entitled for. It is this amount which was being recovered from the retiral dues payable to the petitioner and therefore the same cannot be said to be in any manner bad in law.

5. Having heard the contentions put forth on either and on perusal of the record, it would be relevant at this juncture to take note of the judgment of the Hon'ble Supreme Court in the case of "**Rafiq Masih**" (supra). The Hon'ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery has been held to be 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.”

6. If we take into consideration the aforesaid situations, it would clearly reveal that the case of the petitioner also fits in the situations so envisaged by the Hon'ble Supreme Court. The recovery was being

made at the time of his retirement. The petitioner was not responsible for the erroneous fixation which was granted to him. The error first crept in 21 years prior to the date of recovery order. Moreover, the petitioner was an employee of Class-III post. It also reveals that the respondents have not given an opportunity of hearing to the petitioner before issuance of the impugned order of recovery. Thus, in the light of the judgment of the Supreme Court in the case of "**Rafiq Masih**" (supra), the action on the part of the respondents is bad in law, contrary and is not sustainable.

7. Accordingly, the impugned order dated 15.11.2016 deserves to be and is accordingly set-aside/quashed. As a consequence, the respondents are directed to refund the amount of Rs.2,09,671/- recovered from the retiral dues of the petitioner at the earliest preferably within a period of 60 days from the date of receipt of copy of this order.
8. The writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge