

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 1343 of 2019**

Madhav Prasad Sahu S/o Late Shri Uday Ram Sahu Aged About 63 Years  
R/o Village-Ratnabandha, Post-Loharshi, Police Station-Arjuni Tahsil And  
District Dhamtari (Chhattisgarh), District : Dhamtari, Chhattisgarh

**---- Petitioner****Versus**

1. State Of Chhattisgarh Secretary, Department Of Home/jail, Mahanadi Bhawan, Mantralaya, Police Station And Post- Rakhi, Atal Nagar, Raipur, District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh
2. Director General (D.G.) Home/jail Near Mekahara Chowk, Raipur District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh
3. Superintendent Office Of Superintendent, District Jail-Dhamtari, District Dhamtari (Chhattisgarh), District : Dhamtari, Chhattisgarh

**---- Respondents**

|                |   |                                                              |
|----------------|---|--------------------------------------------------------------|
| For Petitioner | : | Mr. Santosh Kumar Pandey With Mr. Abhishek Pandey, Advocates |
| For State      | : | Mr. Anshuman Shrivastava, PL                                 |

**Hon'ble Shri Justice P. Sam Koshy****Order on Board****26/02/2019**

1. The challenge in the present writ petition is to the order (Annexure P-2) dated 02/07/2018 whereby the respondents have initiated recovery proceedings against the petitioner for an amount of Rs. 80,966/-.
2. The facts of the case is that the petitioner while working as Head Guard of the Jail, District Dhamtari retired from service on 31/07/2018. Just before his retirement impugned order dated 02/07/2018 has been passed intimating him that there is excess payment of Rs. 80,966/- paid to the petitioner during the period 10/02/2012 to 31/06/2012. According to the petitioner the said action on the part of the respondent is bad in law. It is in violation 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**. where it has been specifically held that such recoveries are impermissible under law. It was further contention of the petitioner that said order is bad for the reason that same is in violation of principles of natural justice. Counsel for the petitioner also submits that the petitioner was not in any manner responsible for the erroneous fixation of the benefit that the petitioner has got and for that reason the recovery cannot be made from the petitioner.

3. State counsel opposing the petition submits that it is a case where in the course of finalization of the case of the petitioner it was detected that the petitioner was erroneously granted one increment during the period 10/02/2012 to 31/06/2012 and when this error was detected immediately steps have been taken for rectifying the error and the excess amount paid was ordered to be recovered.
4. According to the petitioner since benefit of the said erroneous fixation was payable to the petitioner till recently, it cannot be said that it was old payment which is being ordered to be recovered. He further submits that the said order cannot be said in any manner stigmatic and the fact that petitioner had given an undertaking at the time of his retirement for recoveries in case of any erroneous payment made, the petitioner does not have a right to challenge the same now.
5. Having heard the contentions put forth on either side and perusal of the record, it would be relevant at this juncture to refer to the judgment of the Supreme Court in the case of **Rafiq Masih** (Supra). In the said judgment there are certain situations which have been enumerated

under which it has been ordered by the Supreme Court that recovery orders are impermissible under those conditions.

6. Situations as envisaged by the Supreme Court in the case of Rafiq Masih(Supra) are reproduced herein 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.”***

7. Taking into consideration the aforesaid facts and circumstances of the case this Court has no hesitation in reaching to a conclusion that the case of the petitioner squarely fits in the situations envisaged by the Supreme Court in case of Rafiq Masih(Supra). Thus, the impugned order to that extent is set aside/quashed. The recovery which has been made from the petitioner has to be immediately refunded back forth-

with without any further delay preferably within a period of three months.

8. Needless to mention that the quashment of the impugned order is only to the extent of recovery. However in case if there has been any erroneous fixation provided to the petitioner after due opportunity of hearing to the petitioner the respondents would have all the right for rectification of the error except for the recovery part.
9. Accordingly the writ petition stands allowed and disposed off.

Sd/-

**(P. Sam Koshy)**  
**Judge**

Rohit