

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1781 of 2019**

Surendra Verma S/o Shri P.P. Verma Aged About 63 Years Occupation Sub Inspector (M) (Retired) Under The Superintendent Of Police, Raigarh District Raigarh R/o Gondpara, Police Station Kotwali District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Home Police Affairs And Finance Department, Mahanadi Bhawan, New Mantralaya, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Director General Of Police Police Head Quarter, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. The Superintendent Of Police Raigarh, District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
4. The Joint Director Treasury, Accountant And Pension, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Palash Tiwari, Advocate
For State	:	Ms. Sunita Jain, GA

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/03/2019**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 21.02.2019, whereby the respondents have issued for an order of recovery to the tune of Rs.3,06,963/- The said amount ordered to be recovered was on account of certain erroneous fixation of pay granted to the petitioner between the period 05/05/1993 to 01/07/2017.
2. The counsel for the petitioner submits that the impugned order is bad in law for the reason that the recovery has been initiated after the

petitioner has since retired. Counsel for the petitioner further submits that the petitioner at no point of time has made any misrepresentation or played fraud for the purpose of getting the said erroneous fixation of pay. Counsel for the petitioner further submits that even otherwise the petitioner has retired as a Class-III employee and the recovery as such become impermissible under law applying 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***.

3. The State counsel on the contrary opposing the petition submits that it is a case where in course of settlement of the retiral dues of the petitioner it was detected that he was paid certain erroneous fixation of pay between the period 05/05/1993 to 01/07/2017. According to the State counsel since the error was detected, authorities took steps for rectification of the error and in the process, excess payment made to the petitioner has been ordered to be recovered and thus prayed for the rejection of the writ petition, as there is no illegality committed by the State authorities in the issuance of the impugned order.
4. The Hon'ble Supreme Court while deciding such issue 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. 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 judgment of the Supreme Court in the case of **Rafiq Masih(supra)**. In the light of the aforesaid situations which have been envisaged in the judgment of the Supreme Court in the case of **Rafiq Masih(Supra)**. If we compare the facts of the present case, it would reveal that the petitioner admittedly retired from service as a Class-III employee. There does not seem to be an allegation of any misrepresentation or fraud played by the petitioner in getting the excess payment on account of wrong fixation. The erroneous fixation was of a period more than 10 years from the date of recovery.
6. Given the undisputed facts of the case this Court has no hesitation holding that the petitioner's case is squarely covered with the judgment of the Supreme Court in the case of **Rafiq Masih(Supra)** and the impugned order of recovery dated 21/02/2019 therefore deserves to be and is accordingly set aside. It is ordered that the

retiral dues payable to the petitioner, if he is entitled for, shall be paid to the petitioner without any further delay.

7. The writ petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
Judge

Rohit