

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2706 of 2019

Binde Ram Markam S/o Late Shri Tiharu Ram Markam Aged About 55 Years R/o Sector-6, Bhilai Police Station Bhilai Nagar, Tahsil And District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home / Police, Mahanadi Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Director General Of Police (Dgp) Police Head Wquarter (Phq), Near Mahanadi Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Inspector General Of Police (I.G.P.) Office Of Inspector General Of Police, 32 Bunglow, Bhilai , District Durg Chhattisgarh., District : Durg, Chhattisgarh
4. Superintendent Of Police (Sp) Office Of Surperintendent Of Police, Durg District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Abhishek Pandey with Santosh Kumar Pandey, Advocates.
For State	:	Ms. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/04/2019

1. The challenge in the present writ petition is to the order Annexure P-1 dated 22/11/2018 whereby an amount of Rs. 1,28,002/-- has been ordered to be recovered from the petitioner. It is said that the said amount was paid to the petitioner on account of certain erroneous fixation of pay from April, 2006 to October, 2018.

2. Facts of the case is that the petitioner is working under the respondents as a Sub Inspector which is a Class-III post. The petitioner is said to have paid certain erroneous fixation of pay from 01.04.2006 to 31.10.2018 and amount of excess payment made as a result of erroneous fixation was of Rs. 1,28,002/-.
3. The contention of the petitioner is that he is not at fault for receiving the said erroneous fixation. It was further contention of the petitioner that he has never made any misrepresentation or played fraud for obtaining the said fixation. It was further contented that the petitioner was first given the erroneous fixation of pay **12** years prior to the order of recovery. For all these aforesaid reasons, counsel for the petitioner submits that recovery part becomes impermissible under law as has been held by 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***.
4. None of the contentions has been disputed by the State counsel. However, State counsel tries to defend the action on the ground that since it has been detected by the State counsel that petitioner has been paid something in excess of what he is otherwise entitled for, department has initiated steps for recovering the same which cannot be said to be, in any manner, arbitrary or bad in law. According to the State counsel, the Government or the employer has the power to rectify the error or mistake that occurs on the part of the Officers of the State which has been detected at a later stage.
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. Some of the 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 the aforesaid situations as has been envisaged by the Supreme Court if compared with the facts of the present case it would clearly reveal that the petitioner admittedly is discharging duties as a Class-III employee. The alleged excess payment has been paid to the petitioner was more than **12** years ago from the date of order of recovery. Alleged excess payment has been paid on account of error on the part of the respondent State Government and that there has been no misrepresentation or false statement made by the petitioner for obtaining the same. Since all these facts are

enumerated in the judgment of the Supreme Court in the case of **Rafiq Masih**(Supra), the present case is also one where this Court can safely hold, that the action on the part of the respondent was totally uncalled for and is otherwise impermissible under law. The impugned order Annexure (P-1) therefore deserves to be and is accordingly set aside. The action on the part of the respondent in initiating recovery proceeding against the petitioner stands set aside/quashed. In case,if the recovery, full or in part, has been made from the salary of the petitioner by the respondent, the same shall be refunded forth with without any further delay.

8. Accordingly, the writ petition stands allowed and disposed off.

Sd/-

P. Sam Koshy)
Judge

Rohit