

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2674 of 2019**

Amarjeet Tiwari S/o Shri Kali Prasad Tiwari, Aged About 39 Years
Constable Presently Working At C.I.D. Branch, Police Head Quarter,
Atal Nagar, New Raipur, District Raipur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Home,
Atal Nagar Mahanadi Bhawan New Raipur Chhattisgarh
2. Director General Of Police, Police Headquarter, Atal Nagar, New
Raipur, Chhattisgarh
3. Superintendent Of Police, Police Training School, Rajnandgaon
District Rajnandgaon Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Somkant Verma, Advocate
For State	:	Ms. Sunita Jain, Govt. Advocate

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 22.03.2019, whereby the department has ordered for recovery of an amount of Rs. 49,158/- from the salary payable to the petitioner. The said amount ordered to be recovered was on account of certain allowances which has been wrongly paid to the petitioner during the period May, 2013 to August, 2015.
2. The contention of the petitioner is that during the period May, 2013 to August, 2015, the petitioner was working as a Constable at Police Training School, Rajnandgaon. Since the said area was a naxalite

area, the department released naxalite allowance payable to the police personnels working in the Police Training School, Rajnandgaon. Petitioner in the course of receipt of certain naxalite allowances during the period May, 2013 to August, 2015 got Rs. 49,158/-. After more than five years of the said payment being made to the petitioner, the department have now issued an impugned order dated 22/03/2019 ordering for recovery and the said amount in the light of the decision taken by the Superintendent of Police, Rajnandgaon dated 07/09/2018 whereby it has been held that the police personnels posted at the Police Training School, Rajnandgaon would not be entitled for naxalite allowance. It is this order of recovery which is under challenge in the present writ petition. Further Contention of the petitioner is that the petitioner is a Class-III low paid employee and the recovery having been made more than 5 years prior to the recovery order being passed, the same becomes impermissible under law and the order of recovery thus deserves to be quashed. Counsel for the petitioner further submits that there is no misrepresentation or fraud played by the petitioner for obtaining the said naxalite allowances.

3. Counsel for the petitioner relied upon 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*** and prayed for quashment of the impugned order.
4. The State counsel on the contrary opposing the petition submits that allowances at the first instance was paid to the petitioner with a condition that if at a later stage, it is found that petitioner is not entitled for the allowance, the said amount could be recovered. As such, now

when there is a decision that he is not entitled for the same, the department was justified for recovering the same. He further submits that since the petitioner is not a retired employee and still serving the department, for this reason also the department has a right for rectification of the error and recovering the loss caused. Thus prayed for the rejection of the writ petition.

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)**. 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 reproduced hereinunder :

“(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. Plain reading of the facts of the present case, it would reveal that the petitioner in the instant case is admittedly a Class-III employee working on the post of Constable. Secondly, it would also reveal that the excess payment paid to the petitioner was prior to six years from the date of order of recovery or from the date it was held that the petitioner was not entitled for the said benefit. Likewise, in the given admitted factual position of the case of the petitioner, in the opinion of this Court, it squarely falls within the situations envisaged in the case of **Rafiq Masih(supra)** decided by the Hon'ble Supreme Court. The impugned order of recovery accordingly is not sustainable and therefore deserves to be and is accordingly set aside/quashed.

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

Sd/-

**(P. Sam Koshy)
Judge**