

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2816 of 2019

Ghanshyam Singh S/o Late Shri J.P. Singh Aged About 60 Years R/o P.S. Kumhari Premises, Police Station Kumhari, Tahsil Dhamdha, 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.
2. Director General Of Police (DGP) Police Head Quarter (PHQ), Near Mahanadi Mantralaya, Police Station And Post Rakhi, Atal Nagar Raipur District Raipur Chhattisgarh.
3. Inspector General Of Police (I.G.P.) Office Of Inspector General Of Police, 32 Bunglow, Bhilai, District - Durg Chhattisgarh.
4. Superintendent Of Police (SP) Office Of Superintendent Of Police, Durg District - Durg Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Abhishek Pandey, Advocate
For State	:	Mr. P. Acharya, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy
Order on Board

12/04/2019

1. The challenge in the present writ petition is to the order dated 20/12/2018 whereby the name of the petitioner reflects at serial No. 2 and there is an order passed by the Superintendent of Police, District Durg for recovery of an amount of Rs.74,548/- which is said to have been erroneously paid to the petitioner on account of wrong fixation granted during 01.07.2006 to 30.06.2017.
2. Contention of the petitioner is that firstly, the order of recovery was never issued to the petitioner and the same has been obtained by him from another similarly placed person who had obtained it under the Right to Information Act. Secondly, it has been contented before passing an order of

recovery no opportunity of hearing has been given to the petitioner to justify his action. It was lastly contended by the counsel for the petitioner that action of recovery is otherwise 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**. It was also contention of the petitioner that order is impermissible for the reason that alleged excess payment was for the first time paid to the petitioner more than 5 years back from the date of order of recovery.

3. 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, State 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 later on.
4. 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.
5. 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.”

6. 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 5 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 judgement of the Supreme Court in the case of **Rafiq Masih**(Supra), the present case is also one where this Court can safely hold that action on the part of the respondent was totally uncalled for and is otherwise impermissible under law. The impugned order 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, the amount has been recovered by the respondent, the same shall be refunded forth with without any further delay.
7. Accordingly, the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge