

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3138 of 2019

1. Vijay Kumar Thakur S/o Late Shri R.K. Thakur Aged About 54 Years
Working As Assistant Grade II, P.W.D. Department, Division Office,
Kanker, District Kanker Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of P.W.D.
Mahanadi Bhawan, Mantralaya Naya Raipur Chhattisgarh
2. Superintendent Engineer P.W.D. Kanker, District Kanker
Chhattisgarh
3. Joint Director (Account, Treasury And Pension) Jagdalpur, District
Bastar Chhattisgarh

Respondents

For Petitioner	:	Mr. T.K. Jha, Advocate
For Respondent/State	:	Mr. Saleem Kazi, Dy. A.G

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/05/2019

1. With the consent of the parties, the matter was heard at motion stage.
2. The Challenge in the present Writ Petition is to the Order dated 05.04.2019 (**Annexure P-1**). Vide the said impugned order, the department has initiated recovery of amount of Rs. 4,22,173/- from the petitioner on the ground that the said amount was paid to the petitioner erroneously. The facts of the case is that, the petitioner was working on the post of Assistant Grade – II with the respondents. It is said that the petitioner has been wrongly granted

benefit of the Kramonnati and increment and an amount which the petitioner has received, certain excess payment for the period between 17.04.2001 to 31.03.2018. The excess amount received by the petitioner is said to be Rs. 4,22,173/- and which the respondents have ordered to be recovered vide impugned order Annexure P-1.

3. The contention of the petitioner is that the decision for the recovery taken by the respondents is bad in law and not sustainable, in view 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***.
4. The contention of the petitioner is that the petitioner is a class- III low paid employee. The erroneous alleged fixation of pay was made in the year 2001 as such, the error took place about 18 to 19 years from the date, prior to the date of Order of Recovery. It is further contention of the petitioner that he was not in any manner responsible for the alleged excess payment, inasmuch as there is no false representation made by the petitioner for getting the same and thus prayed for the quashment of the same.
5. The State Counsel on the other hand, opposing the petition submits that since it was detected by the department that the petitioner has been paid something excess which he was not otherwise entitled for by way of Kramonnati and increment. The department has calculated the excess payment received by the petitioner till now and therefore have ordered for recovering the same.
6. The State Counsel also admitted that since petitioner is still in

service, the department has all the right and power for recovering the same and for the said reason, the judgment of *Rafiq Masih (supra)* would not be applicable in the present case.

7. Having heard the contention put forth on either side, on perusal of the record, what is necessary to be taken note of at this juncture is to admit factual position of the case i.e., the petitioner working as an Assistant Grade -II which is a class III post. The petitioner is said to have received, the benefit of erroneous fixation of pay about 18 to 19 years prior to the issuance of the Order of Recovery. There is no allegation of the petitioner having played fraud or made misrepresentation for obtaining the said benefit.
8. In the case of *Rafiq Masih (supra)*, the Hon'ble Supreme Court has laid down various situations under which the recovery are held to be impermissible in law. Some of the situations envisaged in the said judgment/decision 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.”

9. A perusal of the aforesaid situation, it would clearly reflect that the admitted facts of the present case also fit into those situations which have been held in the judgment of Supreme Court in the case of *Rafiq Masih (supra)* and where the Supreme Court has very categorically held that recovery under any such situation is impermissible.
10. In view of the same, this Court is of the firm view that the impugned order dated 05.04.2019 (Annexure P-1) in the instant case is also not sustainable and is bad in law in the light of the Supreme Court in the case of *Rafiq Masih (supra)*.
11. Accordingly, the present Writ Petition stands allowed. The impugned order stands set-aside/quashed.

Sd/-
(P. Sam Koshy)
Judge