

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 3404 of 2019**

Vijay Kumar Mudaliyar S/o Late B. P. Mudaliyar Aged About 64 Years R/o A/7, Nagar Nirgam Colony, Maharana Pratap Chowk, Bilaspur, Police Station -Civil Lines, Civil And Revenue District - Bilaspur Chhattisgarh.

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, Atal Nagar, District Raipur Chhattisgarh.
2. Municipal Corporation Through Commissioner, Bilaspur District Bilaspur Chhattisgarh
3. Deputy Director, Local Fund Audit, Bilaspur District Bilaspur Chhattisgarh
4. Account Officer, Municipal Corporation, Bilaspur District Bilaspur, Chhattisgarh

**---Respondents**

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|---------------------------|---|-----------------------------------------------------------------------|
| For Petitioner            | : | Mr. Avinash Singh, Advocate                                           |
| For State                 | : | Mr. Sameer Behar, Panel Lawyer                                        |
| For Respondents No. 2 & 4 | : | Mr. H.B. Agrawal, Sr. Advocate along with Ms. Deepali Dubey, Advocate |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**07/05/2019**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 01.09.2017, whereby the respondents have ordered for recovery of an amount of Rs. 94,286/- and have recovered the same from the leave encashment, which was payable to the petitioner.
2. According to the petitioner, he has retired from service on the post of Supervisor under the respondent No.2 w.e.f. 31.03.2017. Subsequent to the retirement of the petitioner, the impugned order dated 01.09.2017 has been issued, whereby the respondents is said to have passed an order that the petitioner on account of certain erroneous fixation of pay w.e.f. 01.07.2010 to 31.03.2012 was paid some excess amount of Rs. 94,286/-, which has been ordered to be recovered and the same has been recovered from the

amount of leave encasement payable to the petitioner. It is this order, which is under challenge in the present writ petition.

3. Counsel for the petitioner submits that the impugned action on the part of the respondents is bad in law, as the same is in violation of the principles of natural justice, in as much as, the petitioner was not given an opportunity of hearing before the impugned order was passed. It was further contended by the petitioner that the impugned order of recovery is also bad in law, as the same is in violation of the judgment of the Hon'ble Supreme Court in the case of **“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”** reported in **2015 AIR SCW 501**, thus, prayed for quashment of the same.
4. The counsel for the State however defending the action on the part of the respondents submits that since the petitioner has been paid certain excess amount because of erroneous fixation of pay, the amount was quantified at Rs.94,286/-, which has been ordered to be recovered. According to the respondents/State, since the petitioner was not entitled for the said excess amount, the Department has only passed an order for rectification and for recovery of the excess payment made and thus it cannot be said to be bad in law in any manner.
5. At this juncture it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”** reported in **2015 AIR SCW 501**. The Hon'ble Supreme Court while deciding the said matter 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."*

6. If we consider the situations, which the Hon'ble Supreme Court has held to be impermissible under law and compare the facts of the present case, it would clearly reflect that the case of the petitioner would squarely fall within the situations as envisaged in the judgment of the Hon'ble Supreme Court in the case of "**Rafiq Masih**" (supra).
7. The impugned order Annexure P/1, in the light of the aforesaid judgment of the Hon'ble Supreme Court is unsustainable as the recovery is impermissible under law and the same is bad in law and deserves to be and is accordingly set-aside/quashed.
8. The petition stands allowed and the impugned order stands set-aside/quashed. The amount recovered by the respondents should be forthwith released to the petitioner within an outer limit of 4 months from the date of receipt of the copy of this order.

Sd/-  
(P. Sam Koshy)  
Judge