

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 3581 of 2019**

Kush Kumar Mishra S/o Late G P Mishra Aged About 65 Years Retired  
Sub- Inspector (M) P T S Rajnandgaon, District Rajnandgaon  
Chhattisgarh., District : Rajnandgaon, Chhattisgarh

**---- Petitioner****Versus**

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

**---- Respondents**

|                |   |                             |
|----------------|---|-----------------------------|
| For Petitioner | : | Mr. Somkant verma, Advocate |
| For State      | : | Mr. Arvind Dubey, PL        |

**Hon'ble Shri Justice P. Sam Koshy****Order on Board****10/05/2019**

1. The challenge in the present writ petition is to the impugned order Annexure (P-1) dated 10.12.2018 whereby the order of recovery to the tune of Rs. 77,337/- has been ordered to be recovered on account of certain excess payment made to the petitioner by way of allowance paid for working in Naxalite Area which the petitioner has said to be entitled to.
2. The contention of the petitioner is that when the petitioner has retired from the service w.e.f. 29.02.2016, the said allowance known as the Naxalite duty allowance was paid to the petitioner during the period from October, 2013 to February, 2016. The contention of the petitioner is that the said payment has not been paid to the petitioner on account of any

misrepresentation or fraud on his part and the same has also been paid by the department not just to petitioner but to all the officers who were in that area at that point of time. He further submits that now after a period of more than 2 year from the date of the petitioner's retirement, they have issued an order of recovery. The said action is impermissible under law in the light of the judgment of the Supreme Court in the case of State of Punjab & Others etc. Vs. Rafiq Masih(White Washer) etc., reported in 2015 AIR SCW 501. Further contention of the petitioner is that the said order of recovery is also bad in law. For the reasons same has been issued without following basic principles of natural justice in as much as, no opportunity of hearing was given.

3. The State counsel on the contrary submits that the petitioner is a Class- I Officer and that he has received the said benefit which he was otherwise not entitled for. That it is only recently that the State Government came to know that it has been wrongly paid to the petitioner and similarly placed persons and therefore, they have passed the order of recovery which cannot be said to be bad in law. State counsel further contented that even otherwise the order is not bad in law for the reason that while making payment itself there was the condition of same being recoverable, if it is at a later stage found erroneously paid. Thus Prayed for the dismissal of the writ petition.
4. Having heard the contention put forth on either side and perusal of the records what would be relevant at this juncture, taking into consideration the situations which the Supreme Court has envisaged in its judgment in the case of Rafiq Masih (Supra) holding that recovery is impermissible under law. 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.”**

5. Plain reading of the aforesaid situations and comparing the situations with the present writ petition, it would reveal that the petitioner in the instant case also a retired employee retired from service way back on 29.02.2016. The alleged erroneous payment made to the petitioner was from the period October, 2013 to February, 2016. There is no averment in the impugned order of recovery that wrong payment was made to the petitioner on account of any misrepresentation by the petitioner.
6. In view of the aforesaid framed matrix of the case, this Court has no hesitation in holding that the matter stands squarely covered by the decision of the Supreme Court in the case of Rafiq Masih (Supra). The impugned order stands set aside/quashed. As a consequence, the writ petition accordingly stands allowed and disposed off.

Sd/-  
**(P. Sam Koshy)**  
**Judge**