

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4345 of 2018**

- Kanwal Singh, S/o Shri Agati Singh, Aged About 61 Years, Retired Assistant Grade Iii , At Office Of Superintending Engineer, Mahanadi Division, Water Resource Department Raipur, R/o Virendra Nagar , Ward No. 02, Behind Civil Court, Saraipali, Police Station Saraipali District Mahasamund Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary , Water Resource Department , Department Mahanadi Bhawan New Mantralay, District Raipur Chhattisgarh.
2. The Superintending Engineer , Mahanadi Division , Water Resource Department Sinhawa Bhawan Civil Lines , District Raipur Chhattisgarh.
3. The Joint Director , Treasury, Account And Pension District Raipur Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Rajesh Kumar Kesharwani, Advocate
For Respondents/ State	:	Shri Priyank Rathi, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****11/11/2019**

Heard.

1. The grievance of the petitioner is that the recovery notice was issued on 18.05.2017 (Annexure P-4) whereby a recovery of Rs. 7,90,007/- was sought for. The recovery has been sought on the ground that wrong annual grade increment was given to the petitioner though he was not entitled for any annual grade increment as he was not holding the requisite qualification of Hindi typing.
2. Learned counsel for the petitioner submits in the earlier round of litigation filed by the petitioner in WPS No. 2897 of 2017 this Court has ordered to make a representation before the competent authority, thereafter, it was

directed that the concerned authority shall consider and decide the same in four months from the date of receipt of representation. In that case the Court has also referred to the law laid down by the Supreme Court in ***State of Punjab & Others Vs. Rafiq Masih (White Washer)*** reported in ***2015 AIR SCW 501***. It is further contended that the petitioner has retired on 31.12.2017, this is not in dispute and as per law laid down in *Rafiq Masih supra* the employees who are due to retire within one year the recovery cannot be made from them. Consequently, the recovery notice served to the petitioner on 18.05.2017, is within one year from the date of retirement and the same would fall within the eris clause laid down by the Supreme Court.

3. Learned State counsel opposes the same and submits that the recovery has been made under Rule 65 of the C.G. Civil Services (Pension) Rules 1976 and it do not prescribe any period of recovery when the notices are issued. Therefore, the notice served to the petitioner is well merited.
4. Perused the documents. Perusal of the documents shows that it is not in dispute that the petitioner retired on 31.12.2017 and the recovery notice is dated 18.05.2019 (Annexure P-4) whereby a recovery of Rs. 7,90,007/- was sought for and in the earlier round of litigation while the Court directed the respondents to decide the representation of the petitioner, the law laid down in *Rafiq Masih supra* also finds place in the order wherein the petitioner relied on.
5. The dismissal of the representation Annexure P-1 would show that while dismissing the representation by order dated 26.05.2018 no whisper has been made as to applicability of the law laid down in the case of *Rafiq Masih supra*.
6. The Supreme court in case of ***State of Punjab and others Vs. Rafiq Masih (White Washer)*** (*supra*) has laid down the following guidelines:-
 - “(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.”

7. Roman (ii) of the restraint clause would show that the retired employee or the employee who are due to retire within one year from the date of recovery, the recovery is held to be impermissible.
8. Undoubtedly, the petitioner has retired on 31.12.2017 and within one year of the date of retirement 18.05.2017 notice was served. Consequently, the recovery which was sought for is within one year from the date of retirement. In a result, the principle laid down in case of Rafiq Masih supra will be squarely applicable in this case also whereby the Supreme Court has restrained the recovery from the employee who are due to retire within one year. In a result, the recovery notice dated 18.05.2017 is quashed. In a result, the dismissal of the representation dated 26.05.2018 would also stand quashed. In the consequence no recovery shall be made pursuant to the notice dated 18.05.2017. Any recovery if it has been made from the petitioner shall be returned to the petitioner within a period of 90 days from the date of receipt of a copy of this order.
9. With such observation, the petition stands disposed of.

Sd/-
Goutam Bhaduri
Judge