

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 5558 of 2019**

Dhneswar Dubey S/o Shri Gajanand Dubey, Aged About 49 Years
Head Constable, Presently Working As Traffic Police, Bhatapara,
District Balodabazar- Bhatapara, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Home
Atal Nagar, Mahanadi Bhawan, New Raipur Chhattisgarh
2. Superintendent Of Police, Balodabazar, District Balodabazar-
Bhatapara, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Somkant Verma, Advocate
For State	:	Ms. Sunita Jain, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****30/07/2019**

Challenge in this petition is to the order dated 22.06.2019 (Annexure P/1) whereby the respondents have passed an order intimating that there is recovery of an amount of Rs.1,32,014/- against the petitioner which is alleged to have been paid in excess to the petitioner.

2. The facts of the case is that, the petitioner is working as a Head Constable under the respondents which is a Class-III category post. It is said that the petitioner has been given erroneous fixation of pay while implementing 6th Pay Commission report w.e.f. 01.01.2006 and as a consequence the petitioner again got erroneous fixation while granting 7th

Pay Commission w.e.f. 01.01.2016. Thus, the excess amount so paid has been ordered to be recovered from the salary of the petitioner.

3. The contention of the petitioner is that, the petitioner has not made any misrepresentation so far as erroneous fixation is concerned. It is also the contention of the petitioner that it is not a case that the petitioner has been held responsible for receiving the same. Lastly it is contended that the said action of recovery by the respondents is impermissible under the law in the light of the judgment of the Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4) SCC 334.

4. The State counsel, on the contrary, opposing the petition submits that it is a case where the petitioner is still in service and that when the respondents have detected excess payment made to the petitioner, they have taken steps for rectifying the mistakes and also to recover the loss caused and thus the action of the respondents cannot be said to be bad in law or contrary in any manner.

5. Given the aforesaid facts and circumstances of the case, what has to be primarily looked into is that, the petitioner is presently working as a Head Constable under the respondents which is a Class-III category post. It is not a case of the respondents that the petitioner had made any sort of misrepresentation for obtaining the said erroneous excess payment. It would be relevant at this juncture to refer to the judgment in case of Rafiq Masih (Supra) wherein in a very categorical term the Supreme Court has given certain situations under which recoveries are held to be impermissible under the law, which are as under:

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery,

where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (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. Perusal of aforesaid situations as enumerated by the Supreme Court would clearly show that the present case of the petitioner also squarely fits in the said situations and as such the recovery part so far as the petitioner is concerned also becomes impermissible under the law. The action for

recovery initiated by the respondents, thus, is held to be bad in law and is set aside/quashed.

7. The recovery made by the respondents shall be forthwith refunded back to the petitioner within a period of 90 days from the date of receipt of certified copy of this order.

8. The quashment of the order of recovery would not come in the way of the respondents in rectifying the error that has been crept in the proper fixation of pay of the petitioner which would be implemented notionally without any recovery.

**Sd/-
(Goutam Bhaduri)
JUDGE**