

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 5953 OF 2019**

Satender Singh S/o Late Shri Charan Singh, aged about 53 Years, R/o Quarter No. A/6, 7th Battallion, Smriti Nagar, Tahsil and District Durg, Chhattisgarh.

... **Petitioner**

versus

1. State Of Chhattisgarh, through Its Secretary, Department of Home/Police, Mahanandi Bhawan, Mantralaya, Police Station and Post Rakhi, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
2. Additional Director General of Police (ADGP), Chhattisgarh Armed Force (C.A.F.), Police Head Quarters (Phq), near Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
3. Commandant, 7th Battallion, Chhattisgarh Armed Force (C.A.F.), Bhilai, District Durg, Chhattisgarh.

... **Respondents**

For Petitioner	:	Mr. Abhishek Pandey, Advocate.
For Respondents	:	Mr. Somkant Verma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/08/2019

1. Challenge in the present writ petition is to the order dated 29.3.2019 (Annexure P-2) whereby the respondents have initiated proceedings for recovery against the petitioner for an amount of Rs.1,22,000/-.
2. The recovery so made is on account of certain erroneous fixation allegedly with effect from 1.1.2006 onwards.
3. Contention of the petitioner is that the petitioner is a Class-3 employee working on the post of Head Constable and that for the said erroneous payment after more than 13 years from the date the impugned order has been passed, the recovery part becomes impermissible under law in terms 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. (2015 AIR SCW 501)** and thus prayed for the quashment of the same.
4. The State Counsel opposing the petition submits that it is a case where it has been found that the petitioner has been paid something in excess of the amount than he was otherwise entitled under rules and since it has been detected the department is justified to recover the same from the petitioner. The

State Counsel further submits that since the petitioner is already in employment, the recovery can be made by way of easy installments from the salary of the petitioner and therefore the judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) would not come to the aid of the petitioner.

5. Having heard the contentions put forth on either side and on perusal of the record, admittedly, the petitioner has been working on a Class-3 post in the capacity of Head Constable. The alleged erroneous fixation of pay has been given to the petitioner about 13 years back i.e. with effect from 1.1.2006. It is not the case of the respondents that the said erroneous fixation of pay has been made on account of any misrepresentation or fraud that the petitioner has played. Neither is it a case that the petitioner had any role to play in the said erroneous fixation of pay that has been granted to the petitioner.

6. 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. (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.”

7. Taking into consideration the aforesaid legal position as has been settled by the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra), this Court has no hesitation in holding that the recovery proceeding initiated by the

department is impermissible under law and is as such bad in law and therefore deserves to be set aside/quashed and accordingly it is ordered for.

8. It has been informed by the petitioner that the deduction has already been started from the monthly salary of the petitioner. If that be so, the recovery from the monthly salary of the petitioner also stands set aside/quashed and whatever amount which has already been recovered from the petitioner should be refunded back to him, with a direction that there shall be no further recovery made from the petitioner.

9. This order, however, would be bound only so far as the recovery part is concerned. This Court however is not interfering so far as the rectification of the erroneous fixation of pay is concerned.

10. The writ petition stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
JUDGE

/sharad/