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HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 376 of 2019***{Arising out of order dated 25.02.2019 passed by the Learned Single Judge in
Writ Petition (S) No. 1277 of 2019}*

1. State of Chhattisgarh Through The Secretary, Department of Home/police Mahandi Bhawan, P.S. And Post Rakhi, Atal Nagar, District- Raipur, Chhattisgarh.
2. Inspector General of Police (IGP) Office of Inspector General of Police 32 Bungalow, Bhilai, District- Durg, Chhattisgarh.
3. Superintendent of Police (S.P.) Office of The superintendent of Police (S.P.) Durg, District Durg Chhattisgarh.

---- Petitioners

Versus

- Pramila Mandavi W/o Late Shri Yashwant Tekam Aged About 41 Years R/o Near Gas Godown, Sector-3, Bhilai, P.S. Bhilai-Bhatti, Tahsil And District- Durg, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Vikram Sharma, Deputy Government Advocate.
For Respondent	:	Shri Abhishek Pandey, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board**P. R. Ramachandra Menon, Chief Justice****02.12.2019**

1. The challenge is at the instance of the State against the judgment dated 25.02.2019 passed by the Learned Single Judge in WPS No.1277 of 2019, whereby the recovery proceedings have been interdicted, placing reliance on the verdict passed by the Apex Court in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.*** reported in ***2015 AIR SCW 501***.
2. Heard Shri Vikram Sharma, Deputy Government Advocate representing the Appellant/State as well as Shri Abhishek Pandey, the learned counsel representing for the Respondent/Writ Petitioner.

3. The sum and substance of the case projected before this Court is that the Respondent herein, who is working as a Class-III employee, was given the pay fixation benefits, in the course of which, an excess amount of Rs. 93,248/- came to be paid to her because of wrong fixation. This was sought to be recovered by the departmental authorities on coming across of the same, by way of appropriate steps. Met with the situation, the Writ Petitioner approached this Court, seeking to interdict the said steps, contending that no recovery was possible, she being a Class-III employee, in view of the law declared by the Apex Court in ***Rafiq Masih*** (supra). The matter was heard elaborately by the Learned Single Judge and placing reliance on the aforesaid judgment, the impugned proceedings were interdicted and the writ petition was allowed, holding that no recovery was possible. This is put to challenge at the instance of the Respondents in the writ petition, raising many a ground.
4. When the matter came up for consideration before this Court, on the last occasion i.e. 14.11.2019, the learned counsel representing the State sought to place reliance on the judgment passed by the Apex Court in ***High Court of Punjab and Haryana and Others Vs. Jagdev Singh*** reported in **(2016) 14 SCC 267**, whereby it was held that recovery was possible in the instance case, as an 'undertaking' was given in connection with the pay fixation, agreeing to have the amount recovered, if at all there was any excess. The learned counsel representing the Writ Petitioner/Respondent sought for adjournment to confirm the position.
5. Today, when the matter is taken up for further consideration, it is brought on record that 'Annexure A/7 undertaking' was given by the writ petitioner, agreeing to have the excess recovered, if at all any mistake had occurred in connection with pay fixation. The law declared by the Apex court in ***Rafiq Masih*** (supra) was considered in the subsequent judgment by the Supreme Court in ***Jagdev Singh*** (supra) whereby, it was held that, even though there was no mistake on the part of the employee for resulting in excess payment, if such payment was

effected, acting upon the 'undertaking' given by the employee enabling the department to recover the excess, if at all any, the Appellant/Department would be justified in resorting to the recovery steps. The factum of given 'undertaking' (as borne by Annexure A/7) is virtually conceded by the learned counsel for the Respondent.

6. In the said circumstance, going by the dictum laid down by the Apex Court in **Jagdev Singh** (supra), we are of the view that the steps taken by the Appellant/State to cause recovery of the public money, based on the 'undertaking' given by the employee, ought not to have been interdicted by the Learned Single Judge. Accordingly, we set aside the verdict passed by the Learned Single Judge. The writ appeal stands allowed and the writ petition stands dismissed. However, we make it clear that the recovery of the amount from the employee shall be only by way of reasonable monthly installments, so that Respondent/Writ Petitioner does not suffer from adverse consequences beyond reasonable limits.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge