

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6755 of 2019**

Saroj Kumar Chowdhury S/o Late Dr. Anil Prasad, Aged About 62 Years, R/o E-60, Rama Life City, Sakri, Near Jain International School, Bilaspur, District- Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Principal Secretary, Fisheries Department, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh
2. The Director, Fisheries Chhattisgarh, Indrawati Bhawan, 4th Floor, (B- Block), New Raipur, Atal Nagar, Chhattisgarh
3. The Deputy Director, Fisheries Department Jagdalpur, District Jagdalpur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Abhishek Pandey, Advocate
For State	:	Ms. Sunita Jain, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****03.09.2019**

1. Counsel for the petitioner makes an oral request for making necessary correction in the cause title.
2. The said prayer is not opposed.
3. The oral request is accepted. Let necessary amendment be carried out during the course of the day itself.
4. The challenge in the present writ petition is to the order Annexure P-1

dated 19.08.2019 whereby the respondents have initiated a recovery proceeding against the petitioner for an amount of Rs.4,16,980/- allegedly by virtue of the erroneous fixation of pay granted since 01.07.2006 onwards.

5. The contention of the counsel for the petitioner is that the petitioner retired from service on 30.06.2019. The impugned order has been passed subsequent to the retirement of the petitioner. He submits that the petitioner is not in any manner responsible for the said erroneous fixation of pay neither has there been any misrepresentation made by the petitioner for obtaining the said amount. The further contention is that the impugned order of recovery is per se bad in the light of the judgment of the Supreme Court in the case of **“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”** reported in **2015 AIR SCW 501**.
6. State counsel, on the other hand, opposing the petition submits that the petitioner retired in June, 2019. In the course of releasing retiral dues it was found that the petitioner was erroneously granted fixation of pay from July, 2006 and since then till the date of retirement, the petitioner has received an excess amount of Rs.4,16,980/- which has been ordered to be recovered. According to the State counsel, since it has been recently detected, the State authorities have all the right to recover the same while releasing the retiral dues to the petitioner.
7. Having heard the contentions put forth on either side and on perusal of the record what is admitted is that the erroneous fixation of pay was first made in July, 2006 i.e. more than 13 years from the date of retirement. The impugned order of recovery has been issued after

the retirement of the petitioner. It is not the case of the respondents that the petitioner was in any manner responsible for obtaining the said amount nor the same was granted on a misrepresentation made by the petitioner. Under the circumstances, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **"Rafiq Masih"** (supra) wherein certain situations have been provided under which the recovery is held to be impermissible. For ready reference the situations as envisaged in the said judgment are reproduced hereinunder :

"(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."

8. If we consider the situations, under which the Hon'ble Supreme Court has held recoveries to be impermissible under law and compare the facts of the present case, it would clearly reflect that the case of the petitioner would squarely fall within the situations as envisaged in the judgment of the Hon'ble Supreme Court in the case of **"Rafiq Masih"** (supra).
9. The excess amount in the instant case has been made more than 13

years prior to the date of retirement as well as issuance of the order of recovery. The petitioner is not responsible in any manner for the said excess payment. The petitioner is a retired employee.

10. Considering all the aforesaid facts this Court is of the opinion that the impugned order of recovery is bad in law and the same is accordingly set aside/quashed.

11. However, since this Court is only interfering with the order of recovery, the rectification part or the proper fixation part would remain untouched. The respondents would be at liberty to grant retiral dues and pensionary benefits in accordance with the rectified pay scale.

12. The writ petition stands allowed and disposed of.

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