

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 8511 of 2019

Neeraj Kumar Mishra S/o Late Harimohan Mishra Aged About 55 Years R/o
District Jail Line Rajnandgaon, District Rajnandgaon Chhattisgarh.
--- **Petitioner**

Versus

1. State of Chhattisgarh through Its Secretary, Ministry of Home Department, Mahanadi Bhawan, Nawa Raipur, District : Raipur, Chhattisgarh
2. Jail Superintendent District Jail Rajnandgaon District Rajnandgaon Chhattisgarh.,
3. The Treasury Officer Rajnandgaon, District Rajnandgaon Chhattisgarh.,
4. The Joint Director Treasury Department Durg, District Durg Chhattisgarh.----
Respondents

For the Petitioner : Mr. Love Kumar Ramteke, Advocate

For the Respondents : Mr. Avinash Singh, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

16-10-2019

1. The challenge in the present writ petition is to the order Annexure P/1 dated 24.09.2019 whereby the respondents have ordered for recovery of Rs. 94,181/- on account of certain excess payment that has been paid to the petitioner.
2. Learned counsel for the petitioner submits that similar issue involved in this case has been decided by the coordinate Bench of this Court in WPS No.1630 of 2019 decided on 08.03.2019 wherein the orders have been passed.
3. Perused the order dated 08.03.2019 passed in WPS No.1630 of 2019 (Satyanarayan Singh Vs. State of C.G). Paras 4, 5, 6, 7, 8 of the said order would be relevant and quoted below :

4. Having heard the contentions put forth on either side and on perusal of the record, admittedly the petitioner works as a Jail Guard which is a Class-III post. The alleged excess payment has been made to the petitioner since July, 2006 which is more than 10 years prior to the order of recovery. It is not the case of the respondents that there has been any misrepresentation made by the petitioner for getting the said erroneous pay scale.

5. Given the aforesaid facts, it would be relevant at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of Rafiq Masih (*supra*) wherein it has been very emphatically held by the Supreme Court that in the given situations, the recovery would be impermissible under law. Some of the situations in the said judgment of *Rafiq Masih (supra)* are reproduced hereinunder:

“11. Recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

12. xxxxxxxxxxxx

(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. Taking into consideration the aforesaid situations and comparing the same with the facts of the present case, this Court is of the opinion that the case of the petitioner stands squarely covered by the judgment of the Supreme Court in the case of *Rafiq Masih (supra)*.

7. Thus, the impugned order of recovery Annexure P-1 dated 22.12.2018 is not sustainable and the same deserves to be and is accordingly set aside/quashed. The writ petition stands allowed.

8. The respondents are directed that whatever amount has been recovered till now, the same shall be refunded to the petitioner forthwith preferably within a period of 60 days from the date of receipt of copy of this Order."

4. Learned State Counsel do not dispute the fact that the issue involved in the instant case is squarely covered by the judgment/ order dated 08.03.2019 passed in WPS No.1630 of 2019.
5. It is ordered accordingly. The direction given in WPS No. 1630 of 2019 shall also applicable to the present case.
6. In the result, the petition is allowed.

Sd/-

**GOUTAM BHADURI
JUDGE**