

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 9108 of 2019**

- Brijesh Pathroliya, S/o Late Shri D.P. Pathroliya Aged About 59 Years
R/o U-11, Dubey Colony, Vidhansabha Road, Raipur, P.S.- Pandri -
Moa, Tahsil And District - Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Its Secretary, Department Of Home/Police, Mahanadi Mantralaya, Police Station And Post Rakhi, Atal Nagar Raipur, District- Raipur, Chhattisgarh
2. Director General Of Police (DGP) Police Head Quarter (PHQ), Near Mahanadi Mantralaya, Police Station And Post Rakhi, Atal Nagar Raipur, District- Raipur, Chhattisgarh
3. Deputy Inspector General Of Police (D.I.G.P.) Department Of Crime Investigation, Police Head Quarter, Sector- 19, New Raipur, Atal Nagar, Tahsil And District- Raipur, Chhattisgarh
4. Supritendent Of Police (S.P.) Department Of Crime Investigation, Police Head Quarter, Sector- 19, New Raipur, Atal Nagar, Tahsil And District- Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Abhishek Pandey with Ms. Deepika Sannat, Advocates
For Respondents/ State	:	Ms. Richa Shukla, Deputy Government Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****08/11/2019**

1. Grievance of the petitioner is that the petitioner was served with a recovery notice dated 03/07/2019 whereby a recovery has been sought for the period from 10/02/2008 to 01/07/2018 and the recovery order Annexure P-2 dated 29/08/2019 has been issued whereby recovery of Rs.1,42,262/- has been sought to be recovered.
2. Learned counsel for the petitioner would submit that the entire order

has been passed at the back of the petitioner without giving any opportunity of hearing. He further referred to case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** reported in 2015 AIR SCW 501 wherein the Supreme Court has given the guideline and categorically stated that recovery on excess payment if it even has been made to the employee it cannot be made in excess of five years before the order of recovery is issued. It is stated that in such case the recovery from 10/02/2008 to 01/07/2018 cannot be issued and even the application of the law to recover the past five years from 2019 opportunity of hearing has to be given.

3. Learned State counsel opposes the argument.
4. The Supreme court in case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** (supra) has laid down the following guidelines:-

“(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.”

5. By application of the said law laid down by the Supreme Court in the facts of this case, the recovery notice is dated 03/07/2019 and the recovery period has been sought to be 10/02/2008 to 01/07/2018. As per Annexure P-1 it shows that the recovery notice first was issued on

03/07/2019, therefore if we take the last five years to calculate the excess payment made, before the order of recovery is issued by reducing the year, the recovery can be confined only from the year 2014 i.e. last preceding five years from the date of issuance of recovery notice. Therefore by application of principle laid down by the Supreme Court the recovery from 10/02/2008 to the year 2014 cannot be made as per the law laid down as it would fall in the bracket of restraint. In a result, the recovery from the employee when the excess payment has been made for a period of excess of five years before the order of recovery issued cannot be made. In a fall out to it recovery post 2014 the State would be at liberty to claim for recovery as the notice for recovery is dated 03/07/2019. It is also obvious that even such recovery is sought to be made, rule of audi alteram partem has also to be followed meaning thereby without giving any opportunity of hearing to the petitioner the recovery in the amalgamated form from 10/02/2008 to 01/07/2018 cannot be made from the petitioner. In a result, the consolidated recovery notice as has been issued Annexure P-1 and Annexure P-2 appears to be illegal and is set aside.

6. In view of the aforesaid directions, the State shall be at liberty to proceed for any recovery after the due opportunity of hearing is given to the petitioner. It is further made clear the recovery if has been made pursuant to the Annexure P-1 shall be returned to the petitioner with a liberty as aforesaid.
7. With the above observation, the petition stands disposed of.

Sd/-

GoutamBhaduri
Judge