

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 10176 of 2019**

- Madhav Rao Bhonsle S/o Late Shri Ishvar Rao Bhonsle, Aged About 63 Years R/o Yamuna Nagar, Mangla Road , Bilaspur P.S. Civil Line Tahsil And District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Jail/correctional Services, Mahanadi Mantralaya, Police Station And Post Rakhi Atal Nagar Raipur District Raipur Chhattisgarh.
2. Director General (Dc) Head Quarter Director General Department Of Jail/correctional Services Near Ghadi Chowk Raipur District Raipur Chhattisgarh.
3. Superintendent Central Jail Bilaspur , District Bilaspur Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Abhishek Pandey, Advocate
For Respondents/ State	:	Shri Neeraj Pradhan, P.L.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****05/12/2019**

1. Heard.
2. The grievance of the petitioner is that the petitioner has retired on 30.06.2019 as Assistant Jail Superintendent and after his retirement, he was served with a notice of recovery from 01.01.1996 to 30.06.2019 (Annexure P-2) and the payment was made by Challan (Annexure P-3).
3. Learned counsel for the petitioner submits that the recovery notice has acted upon wrong fixation of pay and the said recovery could not be made from retired public employee as the case is squarely covered by

the decision of the Supreme Court in *State of Punjab and others etc. Vs. Rafiq Masih (White Washer) and others.*" reported in 2015 AIR SCW 501. He further submits that similar issue has been decided by Co-ordinate Bench of this Court in WPS No. 5796 of 2019, wherein the same ratio of law has been cited in the order dated 06.08.2019.

4. Learned State counsel opposes the argument and submits that the recovery sought for is well merited and does not call for any interference.
5. The Supreme Court in case of Rafiq Masih (supra) has laid down the following ratio:-

“(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 01.01.06 to 31.12.2015 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. When the notices Annexure P-2 wherein the recovery sought to be made from the petitioner are examined, it is obvious that the fixation of salary of the petitioner has not been done on fraud or mis-chief. It is also relevant to note that respondent was not given any opportunity of hearing. Since the recovery notice has been issued after the retirement of the petitioner, as per

per the laid down in ***State of Punjab Vs. Rafiq Masih (Supra)*** the same cannot be done. Accordingly it is directed that the recovery notice issued vide Annexure P-2 are quashed and the recovery so made from the retiral dues of the petitioner shall be returned and further if the retiral dues of pension are being paid, the same shall not stopped.

7. Accordingly, the petition stands disposed off.

Sd/-

Goutam Bhaduri
Judge

Jyoti