

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 8495 of 2018**

Rajendra Kumar Sen S/o Late Babulal Sen Aged About 57 Years Posted As Assistant Fisheries Officer In The Office Of Deputy Director Fisheries Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Principal Secretary Fisheries Department, Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. The Deputy Director Fisheries Department, Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Rakesh Pandey, Advocate.
For State	:	Mr. Salim Kazi, Dy. AG

Hon'ble Shri Justice P. Sam Koshy**Order on Board****04/01/2019**

1. With the consent of parties matter heard finally.
2. The challenge in the present writ petition is to the order Annexure P-1 dated 12/12/2018 whereby the order of recovery amount of Rs. 58,738 has been passed by the respondents. The said amount has been found to be erroneously paid to the petitioner as excess payment on account of wrong fixation of pay given to the petitioner. Annexure (P-3) is chart by which the respondents have shown the details of the period during which the petitioner has been granted excess payment on account of wrong fixation. The details show that the wrong fixation for the first time was made as early as on 28.01.2008 that is almost about 10/11 years back.
3. The contention of the petitioner is that firstly he is Class-III post holder working as Assistant Fisheries Officer under the respondents. He submits that no misrepresentation or fraud has been played by the petitioner for obtaining the said

excess amount. He further submits that whatever was paid to him by the department was purely by the Officers of the respondents and for which the petitioner has not played any role whatsoever. He further submits that the said payment which he has received from the department has been used by him treating it to be the salary that he was otherwise entitled for and now recovering the same from the department would be too harsh a decision. He further submits that such recovery also is otherwise held to be impermissible under law as has been held by 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***.

4. State counsel opposing the the petitioner submits that from the order it is shown that the petitioner has been paid something which he has not been entitled for. That when the error was detected, they have immediately processed for rectification of the same, by ordering recovery of the excess amount which has been paid to the petitioner. As such there is no illegality on the part of the respondents in issuing the impugned order.

5. Having heard the contention put forth on either side and perusal of the records the admitted position as it reflects from the proceedings is that the petitioner undoubtedly is a Class-III employee. The petitioner has been paid the alleged excess payment from the January, 2008 that is about last 11 years back. It is not the case of the respondents that erroneous fixation was made on account of any false representation made by the petitioner.

6. Given the aforesaid matrix of the case it would be relevant at this juncture to refer to judgment of the Supreme Court in the case of Rafiq Masih(Supra) whereby the Hon'ble Supreme Court has laid down certain situations which clearly holds the recoveries to be impermissible under law. Some of the situations are reproduced herinunder:-

“(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.”

7. Plain reading of the aforesaid situations would clearly reflect that the case of the petitioner also squarely falls within the same situations which were envisaged by the Supreme Court and thus the impugned order becomes bad in law in the light of the said judgment itself.

8. Accordingly, this Court has no hesitation in holding that the impugned order is bad in law and recovery ordered for is also impermissible under law and the same deserves to be and is accordingly set aside/quashed with consequences to follow. The amount which has been recovered or adjusted by the department from the arrears payable to the petitioner would be refunded back at the earliest within a period of 60 days.

9. Accordingly, the writ petition stands allowed and disposed off.

Sd/-

**(P. Sam Koshy)
Judge**