

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 23 of 2014

Krishnachand Patel S/o Shri Maniram Patel Aged About 52 Years working as Supervisor, Community Health Centre, Chaple, Police Station Kharsia, Civil & Revenue Distt. Raigarh, Chhattisgarh ---

Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of Health and Family Welfare, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh
2. The Director Health Services, Raipur District : Raipur, Chhattisgarh
3. The Joint Director Account, Treasury & Pension, Bilaspur District : Bilaspur, Chhattisgarh
4. Chief Medical and Health Officer Korba, Distt. Korba District : Korba, Chhattisgarh
5. Block Medical Officer, Chaple, District : Raigarh, Chhattisgarh --- **Respondents**

For the Petitioner	:	Mr. H.S. Patel, Advocate
For Respondent/ State	:	Mr. Neeraj Pradhan, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

18.02.2020

1. The petitioner who is an employee of Class-III and working as Health Assistant applied for fixation of pay on the ground that another similarly placed employee namely T.R. Patel was directed to be granted pay scale of Rs.575 - 880 by order of the State Administrative Tribunal dated 20.08.1997 (Annexure P-7). Thereafter, on the request of petitioner, the recommendation was made by the Director Health Services vide letter dated 06.03.2002 (Annexure P-8) addressed to the Chief Medical & Health Officer to the effect that the petitioner should also be given the similar pay scale as that of T.R. Patel. Accordingly, the petitioner's pay fixation was made by order dated 26.03.2002 (Annexure P-

9) and he was allowed to be granted pay scale of Rs.575 – 880/-. It is further submitted that thereafter the petitioner has received a letter dated 06.12.2013 whereby it was observed that excess payment of Rs.3,63,213/- was made to the petitioner, therefore, deduction of Rs.6000/- per month would be made upto 60 months. The said order is under challenge in this petition.

2. Learned counsel for the petitioner further submits that the case in given facts is covered by the decision of the Supreme Court rendered in ***State of Punjab Vs. Rafiq Masih (White Washer) reported in 2015 AIR SCW 501***. He further submits that though the respondent in their reply has stated that certain undertaking was given before pay fixation, but no such document has been placed on record. Consequently the petitioner being Class-III employee, the alleged recovery in excess cannot be made and complete protection has been granted by the Supreme Court.
3. Learned State Counsel opposes the argument and would submit that since the pay fixation was wrongly made the State was within its right to recover the excess amount paid to the petitioner.
4. Heard learned counsel for the parties and perused the documents. With the reply, no undertaking of the like nature has been placed to show that before pay fixation was granted to the petitioner, the petitioner has given undertaking to recover the amount in case the excess amount is paid. The State reply only shows that fixation of pay ought to have been made from 01.01.1987, but the same was made from 08.06.1986 and having found mistake, the modified recovery sheet was prepared and thereafter the petitioner was directed to deposit the excess amount paid to him by mistake. It is not in dispute that the petitioner is a Class-III employee. The Supreme Court in case of *Rafiq Masih (supra)* 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 01.01.2006 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.”

5. In the light of the aforesaid context when the impugned order/letter dated 06.12.2013 (Annexure P-1) is examined, it only purports that recovery has been sought on the ground that the pay fixation was wrongly made. However, in absence of any undertaking, which could have been placed by the State before the fixation was made at the very inception, the things would have been otherwise. In view of the law laid down by the Supreme Court in *Rafiq Masih (supra)*, Annexure P-1 cannot be allowed to sustain. Consequently, Annexure P-1 dated 06.12.2013 being not sustainable is quashed. The petition stands allowed.

Sd/-
(GOUTAM BHADURI)
JUDGE