

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4465 of 2020**

Dashrath Lal Sinha S/o Late Ramadhin Sinha, Aged About 63 Years,
Retired Ranger From Forest Division Gariyaband (CG), R/o Ward No-5,
Civil Lines Gariaband, District Gariaband, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Forest Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Chhattisgarh
2. Principal Chief Conservator Of Forest, Government Of Chhattisgarh Aranya Bhawan, North Block, Sector- 19, Nava Raipur, Atal Nagar Raipur, Chhattisgarh
3. Divisional Forest Officer, Gariyaband Forest Division, Gariaband, District Gariaband, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. V. V. S. Moorthy, Senior Advocate with Mr. Shantanu Kumar, Advocate
For State	:	Mr. Sudeep Verma, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****19.11.2020**

1. With the consent of the parties, the matter was heard finally.
2. The challenge in the present writ petition is to the order Annexure P-1 dated 10.09.2020 passed by the respondent no.3. Vide the impugned order the respondent no.3 has directed for recovery of an amount of Rs.6,90,902/- which is alleged to have been paid in excess to the petitioner while he was in service.

3. The brief facts relevant for disposal of the present writ petition are that the petitioner was working under the Forest Department of the State Govt. He was initially appointed as a Chainman under the erstwhile State of Madhya Pradesh in 1978. By virtue of the creation of the State of Chhattisgarh the petitioner was allocated to the State of Chhattisgarh and he continued to discharge his duties till his superannuation from service w.e.f. 31.10.2019. Though the petitioner retired from service in October, 2019, the respondents did not clear the retiral dues of the petitioner which led to the filing of a writ petition at the first instance i.e. WPS No. 3392/2020 which is still pending. In the said writ petition notices have been issued to the respondents and immediately after issuance of notice to the State Govt. they have processed the case of the petitioner for releasing the pensionary dues. However, meanwhile, the impugned order Annexure P-1 has been passed asking the petitioner to deposit an amount of Rs.6,90,902/- which is alleged to have been wrongly paid to the petitioner by virtue of erroneous fixation of pay which led to the filing of the present writ petition.
4. The contention of the learned counsel for the petitioner is that the order of recovery issued by the respondents is per se bad in law for more than one reason. Firstly the said alleged erroneous fixation was not on account of any misrepresentation or fraud played by the petitioner. Secondly, the petitioner is employee having worked under the respondents who had already retired about a year back from the date the impugned order was passed. Thirdly, the alleged erroneous fixation of pay was received by the petitioner on account of the mistake committed by the officers under the respondents and not by the

petitioner at any point of time. Lastly, it was contended that the case of the petitioner is squarely covered by the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) & others** reported in **2015 (4) SCC 334.**"

5. State counsel, on the other hand, opposing the petition submits that the petitioner cannot be said to be a low paid employee as he was an employee of the rank of Ranger in the forest department of the State Govt. He submits that when the petitioner was found to be benefited because of an erroneous fixation of pay, the impugned order for recovery of the excess amount paid to the petitioner was passed. He further submits that it was only at the time of processing of the retiral dues that the error was detected and therefore, the impugned order was passed after superannuation of the petitioner. Meanwhile, the State authorities had found certain excess payment made to the petitioner by way of wrong fixation of salary for which the petitioner was directed to deposit the excess amount already paid to him vide order dated 22.08.2020 & 07.09.2020 and thereafter, the impugned order Annexure P-1 has been passed. Thus, the impugned order does not warrant any interference.
6. Having heard the contentions put forth on either side and perusal of the record, 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). In the said judgment there are certain situations which have been enumerated under which it has been ordered by the Supreme Court that recovery orders are impermissible under those conditions. Some of the situations as envisaged by the Supreme Court in the case of Rafiq

Masih(Supra) are reproduced herein under :-

“(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. Taking the aforesaid situations as has been envisaged by the Supreme Court if compared with the facts of the present case, it would clearly reveal that the petitioner admittedly was an employee under the respondents. The alleged excess payment paid to the petitioner more than 5 years ago from the date of order of recovery. The recovery proceedings have been issued much after the retirement of the

petitioner. The alleged excess payment which has been paid was on account of error on the part of the respondent State Government and that there has been no misrepresentation or false statement made by the petitioner for obtaining the same. Since all these facts and situations enumerated in the judgment of the Supreme Court in the case of Rafiq Masih(Supra) where by the Hon'ble Supreme Court has disallowed recovery, the present case is also one where this Court can safely hold that the action on the part of the respondent was totally uncalled for and is otherwise impermissible under law.

8. The impugned order Annexure (P-1) therefore deserves to be and is accordingly set aside. The action on the part of the respondent in initiating recovery proceeding against the petitioner stands set aside/quashed. In case, if the recovery, full or in part, has been made from the petitioner by the respondent, the same shall be refunded forthwith without any further delay.
9. However, the respondent State would always be at liberty to carry out any rectification of the wrong fixation that has been made but it would only have a prospective effect and that too can be done only after providing a fair opportunity of hearing to the petitioner.
10. Accordingly, the writ petition stands allowed and disposed off.

Sd/-
P. Sam Koshy
Judge