

**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(S) No. 10315 of 2019**

C.R. Masih, S/o. Milan Masih, Aged About 63 Years, Occupation-Retired As Hand Pump Technician, Public Health Engineering Division Mungeli, District Mungeli, Chhattisgarh.

**---- Petitioner****Versus**

1. State Of Chhattisgarh, Through The Principal Secretary, Public Health Engineering Department, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. Executive Engineer, Public Health Engineering Division Mungeli, District Mungeli, Chhattisgarh.

**----Respondents**


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For Petitioner : Mr. Abhishek Pandey, Advocate.

For State : Mr. Kapil Maini, Panel Lawyer

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**Hon'ble Shri Justice Goutam Bhaduri****Order On Board****27.01.2020**

Heard

1. On the earlier occasion on 09.12.2019, the State was directed to seek instructions. Again today, it is contended that instructions are awaited.
2. Learned counsel for the petitioner submits that the petitioner was a Hand Pump Technician, he attained the age of superannuation on 30.06.2018 and after attaining superannuation, the order dated 31.12.2018 has been passed wherein it has been stated that he has been paid excess salary of Rs.54,314/- and the same was recovered. It is stated that the petitioner was not heard after such unilateral recovery order has been issued and as per the case of ***State of Punjab Vs. Rafiq Masih, 2015 (4) SCC 334***, recovery from the retired person, who belongs to Class-III employee, is not permissible; therefore, the recovery notice Annexure P-1 is bad in law.

3. Prima facie, reading of Annexure P-1 would show that before such order of recovery has been passed, the petitioner was not given any opportunity of hearing. If the recovery order of like nature has a civil consequence then rule of natural justice is required to be followed. Therefore, at this stage, the petitioner submits that the ratio is covered by the case of *Rafiq Masih*; however, without going into merit of this case and the application of the case of *Rafiq Masih*, prima facie since it has been shown that the order of recovery has been issued without any hearing, therefore the rules of *audi alteram partem* has been defeated. Consequently, the order dated 31.12.2018 (Annexure P-1) is set aside. The case is remitted back to the respondent No.2, Executive Engineer, who will hold the enquiry after giving opportunity of hearing to the petitioner. The amount of Rs.54,314/- shall be refunded back to the petitioner and after enquiry, if it is found that excess amount has been paid, thereafter, the respondent No.2 may pass the suitable orders.
4. In view of the above, the writ petition is allowed to the above extent.

Sd/-  
(Goutam Bhaduri)  
JUDGE

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