

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment Reserved on 20.01.2020****Judgment Delivered on 05.02.2020****Writ Appeal No. 04 of 2020***(Arising out of order dated 11.04.2019 passed in Writ Petition (S) No.2778 of 2019 by the learned Single Judge)*

1. State of Chhattisgarh Through - The Secretary, Department of Home Affairs and Finance, Mahanadi Bhawan, New Mantralaya, Raipur Chhattisgarh.
2. The Director General of Police, Police Head Quarter, Raipur District Raipur Chhattisgarh.
3. The Superintendent of Police, Training School, (PTS) Mana, Raipur District Raipur, Chhattisgarh,
4. The Joint Director, Treasury, Accounts and Pension, Raipur District Raipur, Chhattisgarh.

---- Appellants**Versus**

S.S. Thakur S/o Late Shri Pancham Singh Thakur, Aged about 63 Years, Occupation Sub Inspector (M) (Retired) under the Superintendent of Police (PTS), Mana, Raipur, R/o Ward No. 11, Anand Nagar, P.S. Mana Camp, District Raipur, Chhattisgarh.

---- Respondent

For Appellants/State	: Shri Vikram Sharma, Deputy Govt. Advocate
For Respondent	: Shri Palash Tiwari, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Judgment****Per Parth Prateem Sahu, Judge**

1. Challenge in this writ appeal is to the order dated 11.04.2019 passed in Writ Petition (S) No.2778 of 2019 whereby learned Single Judge allowed the writ petition and quashed the order dated 25.03.2019 (Annexure P/1).

2. The facts of the case in nutshell are that, respondent/petitioner was employed as Sub-Inspector (M) as Class-III employee and retired from service on 30.06.2018. When the respondent/petitioner was holding the post of Sub-Inspector (M), he was granted the benefit of the first as well as the second time scale pay with effect from 01.04.2006 and 28.07.2008 respectively, and after retirement of his service, order dated 25.03.2019 (Annexure P/1) has been issued for recovery of the excess payment on account of erroneously awarding the time scale pay to the respondent/petitioner.

3. The order of recovery of excess payment (Annexure P/1) was challenged in Writ Petition (S) No.2778 of 2019 and after hearing both the parties, learned Single Judge allowed the writ petition by impugned order.

4. Shri Vikram Sharma, learned Deputy Government Advocate appearing for the appellants/State submits that the respondent/petitioner was not entitled for time scale pay, but the pay fixation of the respondent/petitioner has been done erroneously, which only came to the knowledge of the authorities at the time of scrutiny conducted by Joint Director, Treasury, Accounts and Pension at the time of preparation of the documents for retiring employee. He further submits that the respondent/petitioner has given his undertaking mentioning that recovery can be initiated from him if it is found that excess payment has been made to respondent/petitioner. Reliance placed on the judgment passed by Hon'ble Supreme Court in the matter of **State of Punjab and Others v. Rafiq Masih (White**

Washer) and Others¹, is not applicable to the facts of the case; further, that the case of the appellants is covered with another ruling of the Hon'ble Supreme Court in the matter of **High Court of Punjab and Haryana and Others v. Jagdev Singh**², to which the learned Single Judge has not taken note of and submits to interdict with the impugned order passed by the learned Single Judge.

5. Per contra, Shri Palash Tiwari, learned counsel for the respondent submits that the pay fixation after adding the time scale pay was done in the year 2013, at that time, no undertaking was submitted by respondent/petitioner nor execution of any undertaking was sought by the appellants. He further submits that there is no suppression of fact on the part of the respondent of any nature instrumental to the wrong fixation of pay and grant of time scale pay to the respondent/petitioner. The respondent is a Class III employee and he has not placed wrong facts or suppressed any material or fact to avail the benefit of time scale pay. The case of the respondent/petitioner is squarely covered by the case of **Rafiq Masih** (supra) and the learned Single Judge has rightly taken note of the said ruling of the Hon'ble Supreme Court and allowed the writ petition by impugned order, which do not fall for any interference; further, the case of **Jagdev Singh** (supra) is on different facts, therefore, it cannot be made applicable to the facts of the case.

6. We have heard the learned counsel appearing for the respective parties and perused the record.

1 (2015) 4 SCC 334

2 (2016) 14 SCC 267

7. It is the case of the appellants themselves that the payment has been made on 01.12.2013, the respondent/petitioner stood retired on 30.04.2018 and in between, the payment made by fixation of pay in the year 2013 was not ordered for recovery till 30.04.2018 and it is for the first time in the year 2019, they have issued a order dated 25.03.2019 (Annexure P/1) for recovery of the excess payment made to the respondent/petitioner. It is also not the case of the appellants that the respondent/petitioner has made any false statement for opting benefit or suppressed any material facts from the authorities. Undisputedly, the respondent/petitioner is a Class-III employee and the undertaking submitted by respondent/petitioner (Annexure A/3), which is given stressed into the argument by the learned counsel for the appellants, perusal of it shows that the said document/undertaking has been executed on 04.07.2018 i.e. after the date of superannuation of the respondent/ petitioner from his service.

8. The ruling of **Jagdev Singh** (supra) relied upon by the learned counsel for the appellants, is a case where at the time of extending the benefit of revised pay scale was put to notice that any payment if found to be an excess, shall be recoverable and the employee therein had furnished an undertaking while opting the revised pay scale, but in the case at hand, the facts are entirely different. In the instant case, appellants have not asked to submit undertaking nor respondent/petitioner has executed any undertaking at the time of fixation of pay in the year 2013. No notice was served upon the respondent/petitioner that he will be under obligation to return the

amount of time scale pay as fixed and being given to him.

9. The Hon'ble Supreme Court in the matter of **Jagdev Singh** (supra) has taken note of its earlier judgment of **Rafiq Masih** (supra) and found the employee-Jagdev Singh will not be benefited of law laid down by Hon'ble Supreme Court in Rafiq Masih's case on account of undertaking given by him at the time of opting of benefit of revised pay scale. Paragraphs-10 and 11 of the Jagdev Singh's case reads as follows :

“10, In *State of Punjab vs. Rafiq Masih (supra)*, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law: (SCC pp. 334-35)

(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.”

(emphasis supplied).

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the

present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

10. In view of above specific distinction made by Hon'ble Supreme Court between the cases of **Rafiq Masih** (supra) and **Jagdev Singh** (supra), the case law relied upon by the learned counsel for the appellants is not applicable to the facts of the case as it is on different facts and do not help in any manner to the appellants.

11. For the foregoing reasons, we do not find any infirmity in the order passed by the learned Single Judge. The writ appeal being devoid of substance, is liable to be and is hereby dismissed.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge