

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WA No. 264 of 2020**

1. State Of Chhattisgarh Through Its Secretary, Government Of Chhattisgarh, Department Of Home/ Police, Mahanadi, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District Raipur, Chhattisgarh. (Respondent No. 1)
2. Director General Of Police (D G P) Police Head Quarter (Phq), Near Mahanadi, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District, Raipur, Chhattisgarh. (Respondent No. 2)
3. Inspector General Of Police (I G P) Office Of Inspector General Of Police, 32 Bungalow, Bhilai, District Durg, Chhattisgarh. (Respondent No. 3)
4. Superintendent Of Police (S P) Office Of Superintendent Of Police, Durg, District Durg, Chhattisgarh. (Respondent No. 4)

---- Appellant**Versus**

- Labha Ram Dhruv S/o Late Shri Dhanau Ram Dhruv Aged About 50 Years R/o Police Station Old Bhilai Premises, Police Station Old Bhilai, Tehsil And District Durg, Chhattisgarh. (Writ Petitioner),

---- Respondent**WA No. 26 of 2021**

1. State Of Chhattisgarh Through Its Secretary, Department Of Home/police, Mahanadi, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District- Raipur, C.G. District- Raipur C.G.
2. Director General Of Police (DGP) Police Head Quarter (Phq), Near Mahanadi, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District- Raipur, C.G.
3. Inspector General Of Police (IGP) Office Of Inspector General Of Police, 32 Bungalow, Bhilai, District- Durg, C.G.
4. Superintendent Of Police (SP) Office Of Superintendent Of Police, Durg, District- Durg, Chhattisgarh
5. Superintendent Of Police (SP) Office Of Superintendent Of Police, Kabirdham, District- Kabirdham, Chhattisgarh

---- Appellant**Versus**

- Balram Prasad Gupta S/o Late Shri Lalaram Gupta Aged About 59 Years R/o Dayanagar, Rishali, Bhilai, Police Station Bhilai, Tehsil And District- Durg, Chhattisgarh, District- Durg, Chhattisgarh.

---- Respondent**WA No. 193 of 2021**

1. State Of Chhattisgarh Through The Principal Secretary, Government Of Chhattisgarh, Department Of Fisheries, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
2. The Director Fisheries, Chhattisgarh, Indrawati Bhawan, 4th Floor (B-Block) Atal Nagar, Nawa Raipur (Chhattisgarh)
3. The Deputy Director Fisheries Department, Jagdalpur, District Bastar (Chhattisgarh)

---- Appellant**Versus**

- Saroj Kumar Chowdhury S/o. Late Dr. Anil Prasad Prasad Aged About 62 Years R/o. E-60, Rama Life City, Sakri, Near Jain International School, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondent**WA No. 194 of 2020**

1. State Of Chhattisgarh Through Its Secretary, Government Of Chhattisgarh, Department Of Home, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. The Director General Of Police C.G. Police Headquarters, Indravati Bhawan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh
3. The Inspector General Of Police C.G. Armed Force, Headquarter, Bhilai, District Durg Chhattisgarh
4. The Commandant First Battalion, C.G. Armed Force, Bhilai, District Durg Chhattisgarh
5. The Divisional Joint Director Treasury, Accounts And Pension, Durg, District Durg Chhattisgarh

---- Appellant**Versus**

- Chandra Bahadur S/o Late Shri Hom Bahadur Thapa Aged About 62 Years Retired Head Constable, C.A.F., Resident Of Shakti Nagar, Durg, District Durg Chhattisgarh

---- Respondent**WA No. 260 of 2020**

1. State Of Chhattisgarh Through Its Secretary, Government Of Chhattisgarh. Department Of Home / Police, Mahanadi Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District Raipur, Chhattisgarh, District Raipur Chhattisgarh.
2. Director General Of Police (D G P) Police Head Quarter (P H Q), Near Mahanadi, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District Raipur Chhattisgarh.
3. Inspector General Of Police (I G P) Office Of Inspector General Of Police 32 Bunglow, Bhilai, District Durg, Chhattisgarh.
4. Superintendent Of Police (Sp) Office Of Superintendent Of Police, Durg, District Durg, Chhattisgarh,

---- Appellant**Versus**

- Ram Kishan S/o Late Shri Shankar Lal Aged About 54 Years R/o Police Station Kukadur Premises, Police Station Kukadur, Tehsil Pandariya, District Kabirdham Chhattisgarh.

---- Respondent**WA No. 303 of 2020**

1. State Of Chhattisgarh Through Secretary , Department Of Home/ Police Mahanadi Bhawan, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur , District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Additional Director General Of Police (ADGP), Chhattisgarh Armed Force (C.A.F.) , Police Head Quarters (PHQ), Near Mahanadi Bhawan, Atal Nagar, Raipur , District Raipur Chhattisgarh.
3. The Commandant 7th Battalion, Chhattisgarh Armed Force (C.A.F.) Bhilai, District Durg Chhattisgarh.

---- Appellant**Versus**

- Satendra Singh S/o Late Shri Charan Singh Aged About 53 Years R/o Quarter No. A/6, 7th Battalion Smriti Nagar, Tahsil And District Durg Chhattisgarh.

---- Respondent**WA No. 355 of 2020**

1. State Of Chhattisgarh Through The Secretary, Department Of Home/ Police, Mahanadi Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District Raipur Chhattisgarh
2. The Director General Of Police (D G P), Police Head Quarter (P H Q) Near Mahanadi, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District Raipur Chhattisgarh
3. The Inspector General Of Police (I.G.P.) Office Of Inspector General Of Police, 32 Bunglow, Bhilai, District Durg Chhattisgarh
4. The Superintendent Of Police (SP), Office Of Superintendent Of Police, Durg, District Durg Chhattisgarh

---- Appellant**Versus**

- Manjulata Rathore D/o Late Shri N.R. Rathore, Aged About 44 Years R/o Police Station Amleshvar Premises, Tahsil Patan, District Durg Chhattisgarh

---- Respondent**WA No. 369 of 2020**

1. State Of Chhattisgarh Through its Secretary, Department Of Home/police , Mahanadi Mantralaya , Police Station And Post Rakhi, Atal Nagar Raipur , District Raipur Chhattisgarh.
2. The Director General Of Police (Dgp) Police Station Head Quarter (Phq) Near Mahanadi , Mantralaya , Police Station And Post Rakhi , Atal Nagar Raipur , District Raipur Chhattisgarh.
3. The Inspector General Of Police (I.G.P.) Office Of Inspector General Of Police, 32 Bunglow , Bhilai , District Durg , Chhattisgarh.
4. The Superintendent Of Police (Sp) Office Of Superintendent Of Police ,

Durg, District Durg Chhattisgarh

---- Appellant

Versus

- Binde Ram Markam S/o Late Shri Tiharu Ram Markam Aged About 55 Years R/o Sector, 6, Bhilai, Police Station Bhilai Nagar , Tehsil And District Durg, Chhattisgarh , District Durg Chhattisgarh.

---- Respondent

WA No. 377 of 2020

1. State Of Chhattisgarh Through Its Secretary, Department Of Home/ Police Mahanadi, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
2. Director General Of Police (Dgp), Police Head Quarter (Phq), Near Mahanadi, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur, District Raipur, Chhattisgarh
3. Inspector General Of Police (Igp) Office Of Inspector General Of Police, 32 Bunglow, Bhilai, District Durg, Chhattisgarh
4. Superintendent Of Police (Sp) Office Of Superintendent Of Police, Durg, District Durg, Chhattisgarh

---- Appellant

Versus

- Daulal Sinha S/o Shri Mittu Ram Sinha Aged About 59 Years R/o MIG 2/1015, Housing Board, Bhilai, Police Station Jamul, Tehsil And District Durg, Chhattisgarh.

---- Respondent

WA No. 167 of 2020

1. State Of Chhattisgarh Through The Principal Secretary, Fisheries Department. Mahanadi Bhawan, New Raipur, Chhattisgarh, District- Raipur, Chhattisgarh.
2. The Assistant Director Fisheries Department, Rajnandgaon, District- Rajnandgaon, Chhattisgarh,

---- Appellant

Versus

- Ramdhan Singh S/o Shri Nahorik Lal Singh Aged About 52 Years Occupation Service Assistant Fisheries Office, Dongargaon District- Rajnandgaon, Chhattisgarh, District- Rajnandgaon, Chhattisgarh.

---- **Respondent**

WA No. 169 of 2020

1. State Of Chhattisgarh Through The Principal Secretary, Fisheries Department , Mantralaya , Atal Nagar, Nawa Raipur , District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Director Director Fisheries Department , Ambikapur , District Surguja Chhattisgarh.

---- **Appellant**

Versus

- 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....(Writ Petitioner)

---- **Respondent**

WA No. 176 of 2020

1. State Of Chhattisgarh Through The Principal Secretary, Fisheries Department , Mahanadi Bhawan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Assistant Director Fisheries Department , Raigarh, District Raigarh Chhattisgarh.

---- **Appellant**

Versus

- A.K. Chaurasiya S/o Shri Hardaya Aged About 55 Years Posted As Assistant Fisheries Officer , Fish Seed Farm Chhind Sarangarh, Under Assistant Director , Fisheries , Raigarh District Raigarh, Chhattisgarh.

---- **Respondent**

For Appellants : Shri Chandresh Shrivastava, Deputy Advocate General
with Shri Vikram Sharma, Deputy Govt. Advocate.
For Respective Respondents : Shri Rakesh Pandey, Shri Abhishek Pandey,
Shri Pravin Dhurandhar, Miss Dipika Sinha

Hon'ble Shri Prashant Kumar Mishra, Ag CJ &
Hon'ble Smt. Rajani Dubey, J

Judgment On Board By Prashant Kumar Mishra, Ag CJ

22/09/2021 :

1. In this batch of Writ Appeals, common issue arises for determination is whether recovery of excess amount of payment made to a Class-III employee can be recovered when an employee has furnished an undertaking at the time of applying revised pay scale under the Revision of Pay Rules, when the undertaking is not enabled or contemplated under the Rules, which in the present case is the Chhattisgarh Revision of Pay Rules, 2009 and the Chhattisgarh Revision of Pay Rules, 2017 (hereinafter referred to as 'the Rules, 2009' & Rules, 2017' respectively).
2. The Writ Petitions were filed by the Police Constables/Sub-Inspectors/ Inspectors holding Class-III posts in the Police Department and the Ministerial Class-III employees of the Fisheries Department, before the learned Single Judge challenging the order for recovery of the amount paid in excess to them at the time of revision of pay in the year 2009 which was made effective from 1.1.2006 and in 2017, which was made effective from 1.1.2016. All the writ petitions have been allowed by the learned Single Judge thereby quashing the subject recovery against each of the petitioners on the ground that they are discharging the duties as Class-3 employees and excess payment has been made more than 12 years ago and the same was made on account of error on the part of the respondent – State Government without there being any

misrepresentation or false statement on the part of the petitioners. The learned Single Judge has referred to the law laid down by the Hon'ble Supreme Court in the matter of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others**¹ for quashing the recovery.

3. Shri Chandresh Shrivastava, learned Deputy AG with Shri Vikram Sharma, learned Deputy GA for the State/appellant would submit that in view of the judgment of the Hon'ble Supreme Court in the matter of **High Court of Punjab and Haryana and Others Vs. Jagdev Singh**² and the order passed by the Division Bench of this Court in Writ Appeal No.376/2019 (State of Chhattisgarh & Ors Vs. Pramila Mandavi), decided on 2.12.2019, it is now well settled that when an employee has furnished an undertaking at the time of obtaining payment of revised scale of salary under the respective Revision of Pay Rules, recovery can be made from him, acting upon his undertaking. They would submit that the law laid down in the matter of **Rafiq Masih** (Supra) has no application in the facts and circumstances of the present case and to that extent, learned Single Judge has committed an error in allowing the writ petitions. It is also argued that the issue of submission of undertaking by the employee has been considered by the Division Bench of this Court in Pramila Mandavi's case, referred to above, and similar order passed by the learned Single Judge has been set aside.
4. Per contra, Shri Rakesh Pandey, Shri Abhishek Pandey, Miss Dipika Sinha and Shri Pravin Dhurandhar, learned counsels for the respective respondents would submit that the judgment passed in the matter of

¹ (2015) 4 SCC 334 : 2015 AIR SCW 501

² (2016) 14 SCC 267

Jagdev Singh, Supra, has no application in the facts and circumstances of the present case. According to them, in the matter of **Jagdev Singh**, Supra, the Hon'ble Supreme Court was dealing with excess payment made to an officer and not to the employee posted in the lower rung of the hierarchy. According to them, in the case before this Court, the employees are holding class-III post. Therefore, making recovery against them after having paid the amount more than 12 years back, would cause undue hardship on them. They would submit that the law laid down in the matter of **Rafiq Masih** (Supra) is squarely applicable to the facts of the present case.

5. In **Jagdev Singh**, Supra, the facts of the matter have been stated in para-2 of the judgment. After referring to the Haryana Superior Judicial Service Revised Pay Rules, 2001, it is observed that under the Rules, each officer was required to submit an undertaking that any excess payment which may be found to have been paid will be refunded to the Government. The matter was concerning a Civil Judge (Junior Division), who was a Judicial Officer. The Hon'ble Supreme Court thereafter referred to the judgment in the matter of **Rafiq Masih** (Supra), to conclude thus in paras-10 & 11:-

“10 . In State of Punjab v. 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:

- (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.

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.”

6. In **Rafiq Masih** (Supra), the Hon’ble Supreme Court would observe that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the

action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, the Hon'ble Supreme Court was of the view that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.

7. With the above reasoning, the Hon'ble Supreme Court carved out a class of employees and the situations in which recoveries would be impermissible in law. The same has already been reproduced while quoting para-10 of the judgment in the matter of **Jagdev Singh**, Supra, in the preceding paragraph.
8. While applying the ratio in the matter of **Jagdev Singh**, Supra, paragraph-11 is not to be read in isolation, but the same has to be read

conjointly with the facts of the matter in para-2 and the class of employees against whom recovery would be impermissible, as reproduced in para-10. The requirement of submission of undertaking by the employee has to be provided under the Rules which was exactly the position in the matter before the Hon'ble Supreme Court in **Jagdev Singh**, (Supra).

9. In the case at hand, the Revision of Pay Rules, 2009 and 2017 do not make any enabling provision reserving option for the employer to seek refund of the amount paid in excess, by making the employee to furnish an undertaking. Even if we conclude, for the sake of arguments, that even in the absence of enabling provision under the Rules, undertaking given by the employee would operate, the fact remains that against the classes of employees against whom recovery would be impermissible in law, as held by the Hon'ble Supreme Court in the matter of **Rafiq Masih** (Supra), recovery from the employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) would still be impermissible in law. Meaning thereby that even when undertaking is submitted by the employee, but he otherwise belongs to Class-III and Class-IV service, and the amount has been paid more than 5 years back, the law declared by the Hon'ble Supreme Court in the matter of **Rafiq Masih** (Supra) would still hold the field in favour of such employees, because the judgment in the matter of **Rafiq Masih** (Supra) has not been overruled, but only clarified, by the Hon'ble Supreme Court in its later judgment in the matter of **Jagdev Singh**, Supra.

10. Insofar as, the order passed by this Court in the matter of Pramila

Mandavi, referred to above, is concerned, a plain reading of the order would reveal that the facts as to whether the Revision of Pay Rules makes an enabling provision to obtain undertaking and thereafter entitles the employer to make recovery has not been considered. Similarly, the effect of judgment in the matter of **Rafiq Masih** (Supra) making recovery of an amount paid to Class-III or Class-IV employees has also not been dealt with. Therefore, the judgment passed in the Writ Appeals is distinguishable on the strength of law laid down by conjoint reading of the judgments rendered by the Hon'ble Supreme Court in the matters of **Rafiq Masih** and **Jagdev Singh** (Supra).

11. In view of the above and on finding that in the cases at hand, the recovery of the excess payment has been made more than 12 years ago; the writ petitioners belong to Class-III cadre in the services of the State Government, and small amount has been paid to them in a long span of time, which has now accumulated and the recovery of substantial amount is to be made against them, we are inclined to hold that the Writ Appeals have no substance. They deserve to be and are hereby dismissed.

12. However, it is made clear that the judgment in the matter of Pramila Mandavi, referred to above, would remain binding between the parties. If the recovery has already been made from the present writ petitioners, the same shall be refunded to them.

Sd/-
(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-
(Rajani Dubey)
Judge