

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 230 of 2021**

1. State of Chhattisgarh Through The Secretary, Department of Forest, Mantralaya Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. The Principal Chief Conservator of Forest, Raipur Office of Principal Chief Conservator of Forest, Aranya Bhawan, Sector-19, Naya Raipur, District Raipur (C.G.)
3. The Additional Principal Chief Conservator of Forest (AD/NG), Office of Principal Chief Conservator of Forest, Aranya Bhawan, Sector-19, Naya Raipur, District Raipur (C.G.)
4. The Divisional Forest Officer, Karya Ayojana Vanmandal, Raipur (C.G.)
5. The Divisional Joint Director, Treasury Accounts & Pension, Raipur (C.G.)

---- Appellants**Versus**

Smt. Shobha Walia, W/o Late Ranjan Walia, Aged about 60 years, R/o Flat No. 41, Kusha Bhau Thakre Apartment, New Rajendra Nagar, Group No. 4, Raipur, District Raipur (C.G.)

---- Respondent

(Cause-title taken from Case Information System)

For Appellants	:	Mr. Sudeep Agrawal, Deputy Advocate General.
For Respondent	:	Smt. Shobha Walia, in person.

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri Justice N.K. Chandravanshi, Judge****Judgment on Board****Per Arup Kumar Goswami, Chief Justice****09.12.2021**

Heard Mr. Sudeep Agrawal, learned Deputy Advocate General for the appellants and Smt. Shobha Walia, respondent / writ petitioner in person.

2. This writ appeal is presented against an order dated 18.01.2021 passed by the learned Single Judge in Writ Petition (S) No. 5513 of 2018, whereby, the writ petition was allowed, setting aside the order dated 01.09.2017 issued by the respondent No. 3 in the writ petition (appellant No. 3 in this appeal), whereby, the recovery proceeding to recover a sum of Rs. 88,890/- in 30 installments was initiated as well as the order dated 12.07.2018, whereby, the amount was sought to be recovered in 20 installments.

3. The writ petitioner had retired from service on 30.04.2020 while serving as Assistant Grade-I. It is not in dispute that the petitioner was a Class-III employee.

4. The recovery was sought to be effected on the ground of alleged excess payment made to the petitioner due to erroneous pay fixation and such excess payment was made from 01.01.2006 to 01.07.2017.

5. The learned Single Judge, taking note of the fact that the writ petitioner is a Class-III employee and excess payment had been made for a period in excess of 5 years before the order of recovery was issued and that there was no misrepresentation or false statement made by the petitioner in getting the excess payment, set aside the aforesaid order dated 07.07.2017 by relying on the decision of the Hon'ble Supreme Court in the case of ***State of Punjab & Others etc. vs. Rafiq Masih (White Washer) etc.***, reported in ***2015 AIR SCW 501 = (2015) 4 SCC 334***.

6. Mr. Agrawal submits that the writ petitioner had given an undertaking at the time of fixation of pay to refund back any excess payment made on account of erroneous fixation. Relying on the decision in the case of ***High Court of Punjab and Haryana & Others vs. Jagdev Singh***, reported in ***(2016) 14 SCC 267***, it is submitted by him that as the writ petitioner had given an undertaking, the case of ***Rafiq Masih*** (supra) would not be applicable. It is further submitted

that in the case of *State of Chhattisgarh & Others vs. Parmila Mandavi*, (Writ Appeal No. 376 of 2019, which was decided on 02.12.2019), a Division Bench of this Court had observed that as an undertaking was given by the employee, the dicta in *Jagdev Singh* (supra) would apply and resultantly, had interfered with the order of the learned Single Judge setting aside the order of recovery. Accordingly, he submits that the order of the learned Single Judge is not sustainable in law.

7. Learned counsel for the writ petitioner, on the other hand, has drawn the attention of the Court to the judgment rendered in *State of Chhattisgarh & Others v. Labha Ram Dhruv* and other connected cases (Writ Appeal No. 264 of 2020 and other connected writ appeals, decided on 22.09.2021). He submits that the Division Bench, in the aforesaid cases, had taken note of the judgment rendered in *Pramila Mandavi* (supra) and after noticing that recovery was sought to be effected after excess payment was given about 12 years back and as the petitioner therein was a Class-III employee, which aspects were not considered in *Pramila Mandavi* (supra), dismissed the appeal, declining to interfere with the order of learned Single Judge setting aside the order of recovery.

8. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

9. In *Rafiq Masih* (supra) at paragraphs-6 and 7, the Hon'ble Supreme Court observed as follows :

“6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the

instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

10. It was further held in *Rafiq Masih* (supra) that an action of the State, ordering a recovery from an employee, would be in order, so long as it is not

rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. It is also held that recovery from employees in lower rung of service, would result in extreme hardship to them as it is considered that the employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer.

11. After a detailed analysis of the case law on the subject, Hon'ble Supreme Court in *Rafiq Masih* (supra) at paragraph-18 observed as follows :

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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.”

12. In *Jagdev Singh* (supra), recovery was sought to be effected from a Civil Judge, Junior Division, who was placed under suspension and who was eventually compulsorily retired. The Hon'ble Supreme Court took note of the fact that when the Civil Judge had opted for the revised pay scale, he furnished an undertaking as required under the relevant Rules to the effect that he would be liable to refund any excess payment made to him. In view of the above position, the Hon'ble Supreme Court in *Jagdev Singh* (supra) held that proposition (ii) of *Rafiq Masih* (supra) would not apply as the person 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 and as the officer had furnished an undertaking while opting for the revised pay scale.

13. In *Pramila Mandavi*, the writ petitioner was a Class-III employee. It was observed therein that in view of the subsequent decision in *Jagdev Singh* (supra), it will be permissible for an employer to recover excess amount paid on the basis of an undertaking. A perusal of the said judgment goes to show that the conditions in which recovery was held to be impermissible in *Rafiq Masih* (supra) was not dealt with.

14. While passing the order dated 22.09.2021 in *Labha Ram Dhruv* (supra)

and the batch of cases, the Division Bench of this Court had observed as follows:

“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)"

15. A perusal of the above paragraphs would go to show that the Division Bench has recorded that in **Pramila Mandavi** (supra), this Court did not consider as to whether the Revision of Pay Rules, 2009 enables the authorities to obtain an undertaking, permitting the employer to make recovery and also did not advert to the effect of judgment in the case of **Rafiq Masih** (supra) laying down that no recovery shall be effected from employees belonging to Class-III and Class-IV service (or Group-C and Group-D service). It was also noted that even if it is held that an under taking would operate in absence of an enabling provision under the Rules to take an undertaking whereby the employee undertakes to refund back any excess payment, no recovery can be effected from the employees belonging to Class-III and Class-IV service (or Group-C and Group-D service) in terms of **Rafiq Masih** (supra) and also in case the amount sought to be recovered had been continued to be paid for a period in excess of 5 years.

16. We are in respectful agreement with the above view.

17. In view of the decision in **Labha Ram Dhruv** (supra), **Rafiq Masih** (supra)

as well as in *Jagdev Singh* (supra), as the writ petitioner is a Class-III employee and as the recovery is sought to be effected from the year 2008, which is far in excess of a period of 5 years, we are of the considered opinion that no interference is called for with regard to the order of the learned Single.

18. It is pointed out by the writ petitioner in person that total amount of Rs.8,890/- had been recovered from her salary which is not disputed. The aforesaid amount shall be paid back to the writ petitioner within a period of one month from today. The writ petitioner has also submitted that her gratuity and commutation of pension have not been paid till date.

19. On a query of the Court as to why gratuity, commutation of pension etc. have not been paid to the petitioner, Mr. Agrawal submits that because of the pendency of this appeal, the same have not been paid. Now that the appeal has been disposed of, the appellants will make payment of all pensionary benefits to the petitioner within a period of 45 days from today.

20. The appeal is dismissed with the aforesaid observations and directions.

21. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(N.K. Chandravanshi)
Judge