



2025:CGHC:38791

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 302 of 2023**

1 - Arun Kumar Sarve S/o A. Sarve Aged About 55 Years Working As Field Assistant, Resident Of Village And Post Jevra Sirsa, Tahsil And District Durg (C.G.)
... **Petitioner(s)**

versus

1 - State Of Chhattisgarh Through The Secretary, Fishiculture Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)

2 - The Director Directorate Of Chhattisgarh State Audit, Block-1, Second Floor, Indravati Bhawan, Nawa Raipur, Atal Nagar (C.G.)

3 - The Executive Engineer Chhattisgarh State Cooperative Federation Limited, Machhli Palan Vibhag Parisar Near Telibandha Thana, Ravigram, Telibandha, G.E. Road, Raipur, District Raipur (C.G.)

... **Respondent(s)**

For Petitioner : Mr. Rudra Pratap Dubey, Advocate appearing on behalf of Mr. Goutam Khetrpal, Advocate

For State : Mr. Ajay Pandey, Advocate

(Hon'ble Shri Amitendra Kishore Prasad, Judge)**Order on Board****05/08/2025**

1. The present writ petition is being preferred against the impugned order dated 11.10.2022 (Annexure P/1) passed by respondent No. 3, whereby, acting upon the audit report prepared by respondent No. 2, respondent No. 3 has granted approval for recovery of an amount from the salary of petitioner on the ground of alleged excess payment made due to erroneous pay fixation prior to February 2023. Aggrieved by the aforesaid impugned order, the petitioner has approached this Court by way of the present writ petition, seeking the following reliefs:



“10.1 That this Hon'ble Court may kindly be pleased to quash/set-aside the impugned order dated 11.10.2022 (Annexure P/1) and further be pleased to direct the respondent authorities not to recovery any amount from the salary of the petitioner pursuant to the impugned order.

10.2 That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to release the unpaid arrears amount in favour of petitioner, in accordance with law, with interest from the date of entitlement to its actual payment.

10.3 That any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the cost of the petition may be given.”

2. Facts of the case, in a nutshell, are that the petitioner is presently serving as a Field Assistant at the Chhattisgarh Rajya Sahkari Matsya Mahasangh Maryadit, Raipur, and has been discharging his duties diligently and without any adverse record. During the course of employment, the petitioner was granted higher pay-scale and consequential arrears, in accordance with the applicable pay revision rules and Government orders. The said benefits were extended to the petitioner through due process, and without any objection from the authorities at the time of disbursement. Subsequently and without any prior intimation, notice, or opportunity of hearing, the respondent authorities initiated recovery proceedings against the petitioner on the ground that excess payment had allegedly been made to him due to erroneous pay fixation. In furtherance of the same, an amount of Rs. 59,710/- was deducted towards arrears recovery, Rs. 66,783/- was deducted from the salary of petitioner, and further monthly deductions of Rs. 7,073/- were ordered to be made from his salary account. Such deductions were initiated solely on the basis of an internal audit report prepared by the Directorate of State Audit, and based on the approval accorded by the Executive Engineer, Chhattisgarh Rajya Sahkari Matsya Mahasangh Maryadit, Raipur, vide



impugned order dated 11.10.2022, without affording any opportunity of hearing to the petitioner. In view of the above facts and circumstances, the present writ petition is being filed challenging the legality and validity of the recovery initiated against the petitioner.

3. Learned counsel for petitioner submits that the impugned order dated 11.10.2022 is manifestly bad in law and deserves to be set aside. The recovery order impugned in this petition has been issued without affording the petitioner any prior opportunity of hearing. There was no notice served on the petitioner calling for explanation or representation. Such a procedure is in direct violation of the well-established principles of natural justice, *audi alteram partem*, which mandates that no person should be condemned unheard. The Finance Department, by its orders dated 27.05.2008 and 06.08.2015, has explicitly directed that before any recovery is initiated on account of excess payments due to erroneous pay fixation, a reasonable opportunity of hearing must be given to the employee. In the instant case, these directions were wholly ignored, rendering the impugned order illegal and void. The pay fixed in favor of the petitioner was done strictly in accordance with the Chhattisgarh Pay Revision Rules, 2009. These rules provided the basis for fixation of pay and the pay of petitioner was fixed by the competent authority following the prescribed procedure. Hence, the claim of any “excess payment” or irregular payment lacks any foundation. The petitioner cannot be penalized or asked to refund amounts received bona fide pursuant to a pay fixation done in compliance with the applicable rules. It is a settled principle of law that recovery of amounts paid cannot be made if the employee has not been guilty of any fraud, misrepresentation, or concealment of facts. In the present case, the petitioner received the amounts without any wrongdoing or intention to deceive. The payments made were in good faith and with due entitlement. The petitioner was under no obligation to anticipate that such amounts would be recovered years later.



Thus, the impugned order for recovery of excess payment is without legal basis and cannot be sustained. The recovery, if allowed to proceed, will place an undue and disproportionate financial burden on the petitioner. The Hon'ble Supreme Court, in the landmark judgment of **State of Punjab & others Vs. Rafiq Masih (White Washer)**, has clearly laid down guidelines to protect employees from harsh and unjust recoveries of alleged excess payments. It is, therefore, prayed that this Court may graciously be pleased to quash and set aside the impugned order dated 11.10.2022; declare the recovery order illegal, arbitrary, and without jurisdiction; and restrain the respondents from making any recovery on account of the alleged excess payment.

4. On the other hand, learned State counsel opposes the submission made by learned counsel for petitioner and would submit that the present petition under Article 226 of the Constitution of India, challenging the impugned order dated 11.10.2022 passed by respondent No. 3, is without any merit insofar as the State is concerned and deserves to be dismissed at the threshold. The petitioner has failed to demonstrate any right or legal grievance against the State that warrants interference by this Court. The impugned order impugned herein was passed by respondent No. 3, the Executive Engineer of the Chhattisgarh State Cooperative Fisheries Federation Limited, Raipur, based on an audit report by respondent No. 2, and no order or action of the respondent/State is under challenge in this petition. The State vehemently denies all allegations made against it and submits that the petition is not maintainable against it and should be dismissed accordingly.
5. I have heard learned counsel for the respective parties and also perused documents annexed along with the record as also the reply.
6. Upon careful consideration of the submissions, documents on record, and the relevant law, this Court finds merit in the contention made by petitioner that the impugned order is flawed due to procedural violations. It is well



settled that recovery of alleged excess payments cannot be initiated without affording the affected employee a reasonable opportunity of hearing, as mandated by the principles of natural justice and as explicitly directed by the Finance Department's orders dated 27.05.2008 and 06.08.2015. The absence of any notice or hearing prior to the recovery order renders the impugned order liable to be set aside.

7. Hon'ble Supreme Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors.**, reported in **(2015) 4 SCC 334** while considering the recovery of excess payment made to the employees observed thus

“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.”



8. In the above judgment, Hon'ble Supreme Court has held that recovery from the employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) is impermissible in law.
9. Relying upon the decision in the case of Rafiq Masih (supra), Hon'ble Supreme Court in the case of **Thomas Daniel Vs. State of Kerala & Ors.**, reported in **(2022) SCC OnLine SC 536** has further held that recovery from the employees after long time to be unjustified.
10. In the present case, the petitioner belongs to the lower cadre, the pay fixation was done under valid rules, and there is no allegation of fraud or misrepresentation. Recovery without hearing and notice is therefore unlawful and unfair. The Court also notes that the impugned order does not comply with the mandatory procedural safeguards. Accordingly, this Court holds that the impugned order dated 11.10.2022 is arbitrary, illegal, and violative of the principles of natural justice and constitutional provisions. The recovery authorized by the said order cannot be sustained in law.
11. The impugned order dated 11.10.2022 (Annexure P/1) is hereby quashed and set aside. The respondents are restrained from making any recovery from the salary of the petitioner pursuant to the impugned order. Respondents are further directed to refund the amount, if any, already recovered from petitioner and to deposit the same in the account of petitioner within a period of three months from the date of receipt of this order, failing which, amount which is required to be refunded to petitioner shall carry interest at the rate 9% per annum.
12. The writ petition is accordingly **allowed** in above terms.

Sd/-

(Amitendra Kishore Prasad)
JUDGE

Shayna