



2026:CGHC:18246



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1309 of 2026

1. Rakesh Kumar Salam S/o Late Shri Pyarelal Salam Aged About 51 Years R/o Village- Gandagouri, Post- Lilejhar, P.S. And Tahsil- Charama, Distt. North Bastar, Kanker C.G.

... Petitioner

versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home/ Police, Mahanadi Bhawan, Mantralay, Police Station And Post- Rakhi, Atal Nagar, Nawa Raipur, District Raipur C.G.
2. Inspector General Of Police, Chhattisgarh Armed Force (Caf), Police Head Quarter (Phq), Sector- 19, Police Station And Post- Rakhi, Atal Nagar, Nawa Raipur, District Raipur C.G.
3. Divisional Joint Director O/o Divisional Joint Director, Treasury- Account And Pension, Bastar Division, Jagdalpur, Distt.- Bastar C.G.
4. Commandant, Office Of Commandant, C.T.J.W. College, Kanker, District Kanker C.G.

... Respondents

For Petitioner	: Mr. Rishabh Dev Sahu, Advocate
For Respondents	: Ms. Anuja Sharma, Dy. Govt. Advocate



SB: Hon'ble Shri Parth Prateem Sahu, Judge

ORDER ON BOARD

21/04/2026

1. Petitioner has filed this writ petition seeking following reliefs:-

“(i) That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to produce all the relevant records relating to case of the petitioner before this Hon'ble Court for its kind perusal.

(ii) That, this Hon'ble High Court may kindly be pleased to set-aside/quash the impugned Order of Amendment in pay fixation of petitioner dated 05.06.2024 issued by Respondent No.4, Commandant, CTJW College, Kanker (CG) (Annexure P/1).

(iii) That, this Hon'ble High Court may kindly be pleased to set-aside/quash the impugned recovery order of petitioner dated 11.06.2024 for an amount of 3,15,000/- (Three Lac Fifteen Thousand Rupees) issued by Respondent No.4, Commandant, CTJW College, Kanker (CG) (Annexure P/2).

(iv) That, the Hon'ble High Court may kindly be pleased to direct the Respondent authorities to refund the whole deducted amount to the petitioner along with the interest of 18% per annum which has been deducted due to the above mentioned impugned recovery order dated 11.6.2024 issued by Respondent No. 4, Commandant, CTJW College, Kanker (CG).

(iv) That this Hon'ble Court may further be pleased to direct respondents to give suitable compensation to the petitioner for the mental trauma and agony, harassment and hardships suffered by him as also cost of the litigation.”

2. Learned counsel for petitioner submits that petitioner is working on the post of Company Commander in Chhattisgarh



Armed Forces, which is a Class-III post. Respondent No.4 issued an order dated 11.6.2024 (Annexure P-1) for recovery of an amount of Rs.3,15,000/- on the ground that excess payment is made to petitioner due to wrong pay fixation. Excess amount is paid for the period from 01.01.2006 to 01.07.2023. It is contention of learned counsel for petitioner that in view of decision of Hon'ble Supreme Court in the case of **State of Punjab & ors vs. Rafiq Masih (White Washer) & ors.** reported in **(2015) 4 SCC 334** recovery of excess payment from Class-III employee like petitioner is not permissible. He also contended that from the face of the order it is apparent that excess payment is not made to petitioner because of any misrepresentation or fraud on the part of petitioner, hence, recovery of amount, if any paid in excess, cannot be made from petitioner. Therefore, action on the part of respondent-department in recovering amount as mentioned in impugned order towards excess payment is *per se* illegal and arbitrary.

3. On the other hand, learned State counsel opposes the submission of learned counsel for petitioner and submits that petitioner is still in employment and working as Company Commander. He submits that from the order Annexure P-1 it is apparent that excess payment has been made to petitioner due to wrong fixation of pay for the period from from



01.01.2006 to 01.07.2023 and petitioner has also given undertaking for recovery of amount, if paid in excess to petitioner. He contended that the case of respondent is covered by the decision of Hon'ble Supreme Court in case of **Punjab and Haryana and others vs. Jagdev Singh**, reported in (2016) 14 SCC 267, **Chandi Prasad Uniyal vs. State of Uttrakhand and others** reported in (2012) 8 SCC 417, **Syed Abdul Qadir & Ors vs. State Of Bihar & Ors.** reported in 2009 (3) SCC 475, **Col. (Retd.) B.J. Akkara vs. The Govt. Of India & Ors** reported in 2006 (11) SCC 709

4. I have heard learned counsel for the parties and perused the documents enclosed along with writ petition.
5. From the arguments which is advanced by learned counsel for the respective parties it is not in dispute that petitioner is holding the post of Company Commander, which is Class-III post. Petitioner was paid excess payment due to wrong fixation of pay for the period from 01.01.2006 to 01.07.2023. It is not the case of respondents that excess payment is made to petitioner due to misrepresentation or suppression of fact or any fraud played by petitioner with respondent-department.
6. In case of **Rafiq Masih (supra)**, Hon'ble Supreme Court considering the issue of recovery of amount paid in excess has summarized the situations where in certain cases, even



recovery from the Class-III and Class-IV employee by the employer would not be permissible in law. In Para-18 it was 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 hereinabove, 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.”

7. In case of **Jagdev Singh (supra)**, Hon'ble Supreme Court though had considered the issue with regard to the undertaking, however, Para-10 (i) of the decision in case of **Rafiq Masih (supra)** has not been overruled or interfered.



8. From perusal of the above it is clear that the recovery from the employees belonging to Class-III and Class-IV category (or Group 'C' and Group 'D' service) is held to be impermissible in law. Meaning thereby, even if undertaking is submitted by the employee, but he/she otherwise belongs to Class-III or Class-IV service, recovery of excess amount paid from him/her is impermissible.
9. In the case at hand, admittedly, petitioner is working on the post of Class-III cadre in the Chhattisgarh Armed Force. It is also not the case of respondents that petitioner had received excess payment by practicing fraud or by making misrepresentation. Thus, petitioner cannot be compelled to refund the amount which has been paid by the respondents on their own without any misrepresentation or fraud on the part of petitioner.
10. So far submission of learned counsel for the State that petitioner has given undertaking/ consent for refund of the excess amount paid to him at the time of fixation of pay, is concerned, the Division Bench of this Court in case of **Labha Ram Dhruv** (supra), while considering the issue of undertaking, has held that giving of such an undertaking is not a voluntary act and recovery on that basis, therefore, cannot be sustained. Relevant portion of decision in Labha Ram's case (supra) reads thus:-



“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”

11. In light of above decisions and in the given facts and circumstances of the case, in the considered opinion of this Court, the respondents cannot be permitted to effect recovery



from the petitioner of the amount paid in excess and being so, recovery against petitioner is not sustainable.

12. Consequently, writ petition is allowed in part. Impugned order of recovery dated 11.6.2024 (Annexure P-2) passed against petitioner is hereby quashed. If recovery is already made, respondents are directed to refund the amount so recovered to petitioner within a period of four months from the date of receipt of copy of order, failing which aforesaid amount shall carry interest @ 6% per annum till actual date of payment.
13. Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-