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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1608 of 2026

1 - Lalit Kumar Markam S/o Shri Somaruram Markam Aged About 39 Years
R/o House No. 36, Ward No. 13, Nayapara, Bhandarseoni, Kondagaon,
District- Kondagaon, Chhattisgarh.

--- **Petitioner(s)**

versus

1 - State Of Chhattisgarh Through Secretary, Forest And Climate Change
Department (Forest Department) Mahanadi Bhawan, Atal Nagar, Naya
Raipur, District- Raipur, Chhattisgarh.

2 - Principal Chief Conservator Of Forests Forest Department, Aranya
Bhawan, Raipur, District- Raipur, (C.G.)

3 - Divisional Forest Officer Forest Division Kondagaon, District- Kondagaon,
(C.G.)

... **Respondents**

For Petitioner : Mr. Navoday Singh, Advocate

For Respondents-State : Mr. Vivek Verma, G.A.

Hon'ble Shri Parth Prateem Sahu, Judge

ORDER ON BOARD

02/04/2026

- Petitioner has filed this writ petition against the order of recovery dated
07.05.2024 seeking following reliefs :-

"10.1 That, this Hon'ble Court may kindly
be pleased to call for the entire record
relating to recovery of petitioner.

10.2 That, this Hon'ble Court may kindly
be pleased to quash the impugned
recovery order dated 07.05.2024, whereby
recovery of Rs.1,59,823/- has been
directed to be effected from the
petitioner's salary in 72 monthly



installments commencing May 2024 and direct the respondent authorities not to effect any recovery from the petitioner's salary in pursuance of the impugned order.

10.3 That, the Hon'ble Court may kindly be pleased to direct the respondent authorities to refund the amount already recovered from the petitioner's salary from May 2024 to Jan 2026 along with interest, as the recovery has been effected in violation of principles of natural justice and binding precedent.

10.3 Any other relief which this Hon'ble Court deems fit according to the facts and circumstances of the case may also be granted."

2. Learned counsel for petitioner submits that petitioner is working as Forester under the respondents, which is a Class-III post. Respondents have issued an order dated 07.05.2024 (Annexure P-1) for recovery of an amount of Rs. 2,22,603/- on the ground that excess payment is made to petitioner due to wrong pay fixation. Excess amount is paid for the period from 01.07.2013 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 the employee like petitioner a Class-III employee 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 his misrepresentation or any fraud played by petitioner to the respondent-department. Recovery of amount if paid in excess towards salary cannot be made from him. Therefore, action on the part of respondent-department in deducting the amount as mentioned towards excess payment is *per se* illegal and arbitrary.



3. On the other hand, learned counsel for respondents opposes the submission of learned counsel for petitioner and submits that from 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 01.07.2013 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 Forester, which is Class-III post, he was paid excess payment due to wrong fixation of pay for the period from 01.07.2013 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. 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, even if some undertaking is given then also it will not be a ground for respondent-department to recover the amount when Hon'ble Supreme Court in



case of **Rafiq Masih (supra)** in categorical terms has held that recovery of excess amount from Class-III and Class-IV employee is impermissible in law.

8. In case of High Court 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. This aspect is also considered by the Division Bench of this Court in **WA No.264/2020 (State of CG vs Labha Ram Dhruv)** wherein it was observed 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”

9. 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 that even if undertaking is submitted by the employee, but he otherwise belongs to Class-III or Class-IV service, recovery of excess amount from him/her is impermissible.
10. The other decisions as relied by learned counsel for the State is prior to the decision in the case of **Rafiq Masih (supra)**.
11. In the case at hand, admittedly, petitioner is holding a post of Class-III under the respondents/department. It is also not the case of respondents that petitioner had received excess payment by practicing fraud or by making misrepresentation. Thus, petitioner could not have been compelled to return the amount which has been paid by the respondents on their own without any misrepresentation or fraud on the part of petitioner.
12. 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.
13. Consequently, writ petition is **allowed** and the impugned recovery order dated 07.05.2024 (Annexure P-1), is hereby quashed. Respondents are directed to return back the amount, if recovered from petitioner towards recovery of excess payment, within a further period



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of 04 months from the date of receipt of order passed by this Court,
failing which the recovered amount shall carry interest @ 8% p.a. from
the date of order passed by this Court till its realization.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
JUDGE

Balram