



2026:CGHC:3134

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5492 of 2022

Bharat Singh Rajput S/o Late Shri Vishram Singh Dangi (Rajput) Aged About 65 Years Occupation Ex Government , Retd. Assistant Grade Iii, Wireless Operator, Office Of S.P. Janjgir , District Janjgir Champa , R/o Village Dudhwara, Tahsil Rahali, District Sagar Madhya Pradesh.

... **Petitioner**

versus

1 - The State Of Chhattisgarh Through Secretary Water Resources Department , Mantralaya Mahanadi Bhawan, Capital Complex, Atal Nagar, New Raipur, District Raipur Chhattisgarh.

2 - Managing Director Chhattisgarh Infrastructure Development Corporation Limited, Second Floor, Chhattisgarh Rajya Kaushal Vikas, Prardhikarna Bhawan, Old Police Head Quarter Campus, Raipur, District Raipur Chhattisgarh.

3 - General Manager Chhattisgarh Infrastructure Development Corporation Limited, Second Floor, Chhattisgarh Rajya Kaushal Vikas , Prardhikarna Bhawan, Old Police Head Quarter Campus, Raipur, District Raipur Chhattisgarh.

4 - Superintendent Of Police Janjgir District Janjgir Champa Chhattisgarh.

... **Respondents**

For Petitioner : Mr. Sunil Sahu, Advocate

For Res. Nos. 1: Mr. Abhishek Kumar Singh, Panel Lawyer

&4/State

For Res. Nos. 2 & 3 : Ms. Purnima Singh, Advocate

({Hon'ble Shri Justice Sachin Singh Rajput})

Order on Board

19/01/2026

1. Following relief (s) has been claimed in this petition -

“10.1 That this Hon'ble Court may kindly be pleased to issue an appropriate writ by quashing the impugned order dated 04.03.2022 (AnneuxreP-1) which relates to recovery after retirement.

10.2 That this Hon'ble Court may kindly be pleased to issue an appropriate writ by commanding and directing the respondents to release the amount of Gratuity and leave encashment forthwith with appropriate rate of interest from the date of superannuation.

10.3 That this Hon'ble Court may kindly be pleased to issue an appropriate writ commanding and directing the respondents to considered and decide the petitioner case in light of the Circulars as well as decision of this Hon'ble Court.

10.4 Any other relief, which this Hon'ble Court may deem fit and proper, may also be passed in favour of the petitioner together with cost of the petition.”

2. Learned counsel for the petitioner submits that the challenge in this writ petition is to an order dated 04.03.2022 (Annexure P/1) passed by the Superintendent of Police, Janjgir-Champa, District- Janjgir-Champa, respondent No. 4 herein, by which it has passed an order of recovery of Rs. 51,678/- on account of excess payment paid to the petitioner. Out of which an amount of Rs. 10,678/- was already recovered and Rs. 41,000/- was directed to be deposited. He also submits that the petitioner has also prayed for payment of leave encashment and gratuity to the petitioner/respondent. Learned counsel for the petitioner further submits that the petitioner was the employee of respondent Nos. 2 & 3 and was working on deputation with the respondent Nos. 1 & 4. On attaining the age of superannuation, he retired from the services with effect from 31.01.2019. He further submits that the petitioner was Class-III employee and the impugned order was passed after three years of his retirement, therefore, the petitioner being class-

III employee, cannot be subjected to any recovery in the light of judgment passed by Hon'ble Supreme Court in the case of **State of Punjab and ors etc. Vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334**. She further submits that the judgment of Rafiq Masih (supra) has been subsequently followed by Hon'ble Supreme Court in the case of **Thomas Daniel vs. State of Kerala and others** reported in **2022 SCC OnLine 536** and **Jogeswar Sahoo & ors. vs. The District Judge, Cuttack & ors., 2025 SCC OnLine SC 724**. He again submits that after notices of this writ petition was issued, the respondent No. 2 & 3 made the payment of Rs. 2,74,761/- as leave encashment and Rs. 749639/- as gratuity to the petitioner on 31.07.2023. The said payment was paid belatedly i.e. after about 4 years of his retirement, for which the petitioner is also entitled for the interest, thus, the relief as claimed by the petitioner may be granted.

3. Learned State counsel while opposing the submission made by learned counsel for the petitioner submits that the impugned order of recovery was issued, as some excess payment on account of amended pay scale was made to the petitioner and when this fact came into the surface, the recovery orders were passed.
4. Learned counsel for respondent Nos. 2 & 3 submits that though the gratuity was sanctioned earlier however, in absence of fund from the State Government, the same could not be paid to the petitioner right in time, as such, there is no mistake on the part of the respondent Nos. 2 & 3. Therefore, there is not illegality or irregularity in the impugned recovery orders.
5. Heard learned counsel for the parties and perused the record.
6. The first relief sought by the petitioner is for setting-aside the order dated 04.03.2022 (Annexure P/1).
7. Perusal of the impugned order indicates that on account of some excess payment on account of amended pay scale to the petitioner, recovery of Rs. 51,678 was ordered out of which Rs. 10,678/- was already recovered and direction was issued to recover the remaining amount of Rs. 41,000/-. It has not been disputed by either of the party that the petitioner is a Class-III employee. It is not a case of the respondent that the excess payment with regard to amended pay scale was made on account of any miss-representation or fraud played by

the petitioner.

8. The issue involved in this case is squarely covered with the judgment rendered Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) wherein the Supreme Court has laid down certain situations where it has been categorically held that it would be impossible under law for the employer to make recovery. The situations as envisaged in the said judgment are as under:

“(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.”

9. The judgment of Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) has also been followed with approval in the case of **Thomas Daniel (supra)** and **Jogeswar Sahoo (supra)**. Thus, in the opinion of this Court, the impugned order can not sustained scrutiny of this Court and is hereby set aside. Any recovery made at the strength of the impugned order dated 04.03.2022(Annexure P/1) may be refunded back to the petitioner within a period of 60 days from the date of receipt of copy of this order. This leads me to the second relief is that the petitioner is claiming with regard to interest on delayed payment of gratuity and leave encashment.
10. Learned counsel for respondent No. 2 & 3 forcefully submitted that as the funds were not sanctioned by the State Government, the same was not paid to the petitioner in due course of time. Scarcity of fund cannot

be a ground to deny the legitimate claim of the retired employee. It is a right of the employee to get leave encashment and gratuity at the time of his retirement of his service. The petitioner was retired on 31.01.2019 whereas according to learned counsel for the parties, the said amount of leave encashment and gratuity was paid belatedly on 31.07.2023, thus, this Court is inclined to grant interest on the aforesaid amount. Accordingly, the concerned respondent authority shall pay interest @ 6% from the date of retirement till 31.07.2023 on the amount of gratuity and leave encashment paid to the petitioner.

11. The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sachin Singh Rajput)

JUDGE

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AMITA DUBEY

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