CGHC010269272026 2026:CGHC:32100

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5354 of 2026

Devsai Ram Tirkey S/o Late Shri Burjuram Tirkey Aged About 62 Years R/o Village Laxmipur - Premnagar, P.S. And Tahsil - Dharamjaigarh, District Raigarh Chhattisgarh

... Petitioner(s)

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 Chhattisgarh

2. Divisional Joint Director O/o Divisional Joint Director, Treasury - Accounts And Pension, Bilaspur Division, District Bilaspur Chhattisgarh

3. Superintendent Of Police (S.P.) Office Of Superintendent Of Police (S.P.) Raigarh, District Raigarh Chhattisgarh

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner(s)	:	Mr. Abhishek Pandey, Advocate
For Respondent(s)	:	Mr. Shahil Singh, P.L.

(HON'BLE SHRI JUSTICE BIBHU DATTA GURU)

Order on Board

27/07/2026

1. The present petition has been filed 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 recovery order of petitioner dated 07.05.2026 for an amount of Rs. 5,89,075/- issued by Respondent no. 2 Divisional Joint Director, Bilaspur, District Bilaspur (C.G) (Annexure P/2 in part) only in relation to recovery order.

(iii) That, the Hon'ble High Court may kindly be pleased to direct the Respondent authorities to refund the whole deducted amount to the petitioner i.e. Rs. 5,89,075/- along with the interest of 18% per annum which has been deducted due to the above mentioned impugned recovery order dated 07.05.2026 issued by Respondent No. 2 Divisional Joint Director, Bilaspur, District Bilaspur (C.G.).

(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 the petitioner submits that the petitioner retired from service on 30.04.2026 and, thereafter, the respondent authorities issued the impugned order dated 07.05.2026 (Annexure P/2) directing recovery of an amount of Rs.5,89,075/- on the ground that excess salary had been paid to him. It is

submitted that the petitioner had been drawing the said pay and allowances since 2008 till 2026 and that the alleged excess payment was not attributable to any misrepresentation, fraud or concealment on his part, but was solely on account of an act of the employer. Learned counsel contends that the impugned recovery is contrary to the law laid down by the Hon'ble Supreme Court in ***State of Punjab and Others v. Rafiq Masih (White Washer), (2015) 4 SCC 334,*** wherein it has been held that recovery from retired employees, or employees who are due to retire within one year from the date of the recovery order, is impermissible and that recovery of excess payment made for a period exceeding five years prior to the issuance of the recovery order is also unsustainable in law. It is argued that, in the present case, the impugned recovery order has been passed after the retirement of the petitioner and the alleged excess payment pertains to a period commencing from 2008, which is far beyond five years preceding the issuance of the recovery order. It is further submitted that the petitioner was holding the post of Head Constable a Class-III post, and therefore his case squarely falls within the categories carved out by the Hon'ble Supreme Court wherein such recovery has been held to be impermissible. Learned counsel further submits that no show-cause notice was issued and no opportunity of hearing was afforded to the petitioner before passing the impugned pay re-fixation and recovery orders, thereby rendering the same violative of the principles of natural justice. On these grounds, it is submitted that the impugned orders are arbitrary, illegal and liable to be quashed.

3. Per contra, learned counsel for the respondents submits that at the time of processing the pension case and retiral benefits of the petitioner, an objection was raised by the office of the Joint Director, Treasury, Accounts and Pension, Bilaspur regarding the pay fixation granted to the petitioner on 2008. Upon examination of the said objection, it was found that the petitioner's pay had been erroneously fixed, resulting in excess payment of salary during the course of service. Consequently, after recalculation, an amount of Rs.5,89,075/- was found recoverable from the petitioner. Learned counsel submits that since the excess payment was made due to erroneous pay fixation, the respondents were justified in directing recovery of the excess amount and, therefore, no illegality has been committed by the authorities in passing the impugned orders.

4. I have heard learned counsel for the parties and perused the pleadings as well as the material available on record.

5. The principal issue that arises for consideration in the present case is whether the respondents were justified in revising the pay fixation of the petitioner and directing recovery of an amount of Rs.5,89,075/- after his retirement on the ground of erroneous pay fixation, particularly when the alleged excess payment relates to a

period commencing from the year 2008, the petitioner was holding a Class-III post, and there is no allegation of any misrepresentation or fraud on his part. A further issue which requires consideration is whether the impugned orders could have been passed without affording any opportunity of hearing to the petitioner and whether the same are sustainable in light of the law laid down by the Supreme Court in ***Rafiq Masih (Supra).***

6. In ***Rafiq Masih (Supra)***, the Supreme Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

> *"(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
>
> *or (ii) Recovery from retired employees, 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.*

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer 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. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

7. From a perusal of the record, it is not in dispute that the petitioner was holding the post of Head Constable, a Class-III post, and had already retired from service before issuance of the impugned orders. It is also not disputed that the alleged excess payment pertains to the pay fixation granted to the petitioner on 2008, whereas the impugned recovery order came to be passed only on 07.05.2026. There is no material available on record to indicate that the petitioner had obtained the alleged excess payment by practicing fraud, misrepresentation or suppression of any material fact. The excess payment, if any, appears to have arisen on account of an act attributable to the employer.

8. In the considered opinion of this Court, the case of the petitioner squarely falls within the categories carved out by the Supreme Court in ***State of Punjab and Others v. Rafiq Masih (White Washer), (2015) 4 SCC 334,*** inasmuch as the petitioner is a retired employee, was holding a Class-III post and the alleged excess payment relates to a period much beyond five years preceding the issuance of the recovery order. Consequently, recovery of the alleged excess amount from the petitioner cannot

be sustained in law.

9. Furthermore, the record does not disclose that any show-cause notice was issued or any effective opportunity of hearing was afforded to the petitioner prior to passing the impugned pay re-fixation order and consequential recovery order. The impugned action, therefore, also stands vitiated for non-compliance with the principles of natural justice.

10. At the same time, this Court is not inclined to examine the correctness or otherwise of the pay fixation granted to the petitioner on merits. Merely because recovery of the alleged excess payment is impermissible in view of the law laid down in Rafiq Masih (supra), it would not preclude the respondents from examining the issue of pay fixation in accordance with law. However, any such exercise can be undertaken only after affording due opportunity of hearing to the petitioner and passing a reasoned order.

11. Accordingly, the impugned order dated 07.05.2026 (Annexure P/2) and the consequential recovery of amount 5,89,075/- are hereby set aside. Liberty is reserved to the respondents to undertake a fresh exercise with regard to pay fixation of the petitioner in accordance with law, after affording him an adequate opportunity of hearing. It is, however, made clear that any recovery of the alleged excess payment already made to the petitioner shall be governed by the law laid down by the Supreme

Court in ***Rafiq Masih (supra).***

12. Consequently, the respondents are directed to release and refund to the petitioner the amount, if any, recovered or withheld pursuant to the impugned recovery order dated 07.05.2026. The respondents shall further ensure release of all remaining admissible retiral dues, if any, payable to the petitioner. The aforesaid exercise shall be completed within a period of 50 days from the date of receipt of a certified copy of this order.

13. With the aforesaid observations and directions, the writ petition stands disposed of. No order as to costs.

Sd/-
(BIBHU DATTA GURU)
JUDGE

Jyoti