

**Uday Kumar Singh Vs. Labour**

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**SooperKanoon Citation :** [sooperkanoon.com/76754](http://sooperkanoon.com/76754)

**Court :** Jharkhand

**Decided On :** Sep-05-2016

**Appellant :** Uday Kumar Singh

**Respondent :** Labour

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 2638 of 2016  
----- Uday Kumar Singh . Petitioner -Versus- 1. The State of Jharkhand, through its Chief Secretary.

2. The Principal Secretary, Department of Labour, Employment, Training and Skill Development, Government of Jharkhand, Ranchi.

3. The Director, Employment and Training, Government of Jharkhand, Ranchi. ....  
Respondents ----- CORAM : HONBLE MR. JUSTICE H.C.MISHRA ----- For the  
Petitioner : : M/s. Sachin Kumar, Advocate For the State : : M/s. Pratiush Lala, J.C.  
To G.P.-IV ----- 6/ 05.09.2016. Heard learned counsel for the petitioner and the  
learned counsel for the State.

2. The petitioner is aggrieved by the office order contained in memo No. 279 dated 30.03.2016 issued by the respondent No. 3, the Director, Employment and Training, Government of Jharkhand, brought on record as Annexure-3 to the writ application, whereby the dates of the 2 nd A.C.P. and 3rd M.A.C.P. granted to the petitioner have been shifted and the excess amount paid has been ordered to be

recovered from the petitioner.

3. The petitioner was appointed as Lower Division Clerk in District Employment Exchange, Dumka, on 05.05.1980 and during the course of his service the petitioner was promoted to the post of Head Clerk in the year 2014 on which post the petitioner is presently working. By office order contained in Memo No. 68 dated 09.03.2005, brought on record as Annexure-1 to the writ application, the petitioner was granted the benefit of 1 st A.C.P. in the pay-scale of Rs.4500-7000/- w.e.f. 08.06.2004 and he was also granted the benefit of 2nd A.C.P. w.e.f. the same date in the pay-scale of Rs.5000-8000/-. The name of the petitioner appears at serial No. 44 in the said office order. Subsequently, by another office order No. 32/11 dated 09.07.2011, the petitioner was granted the 3rd M.A.C.P. w.e.f. 05.05.2010 in P.B. Rs.9300- 34800/- with the grade pay of Rs.4600/-, but the date of grant of 3 rd M.A.C.P. of the petitioner was confirmed w.e.f. 05.05.2011, by the office order No. 86/13 dated 03.12.2013. Subsequently, the impugned order bearing memo No. 279 dated 30.03.2016 as contained in Annexure-3 to the writ application, was issued, whereby, in view of the opinion received from the Finance Department, it was found that the benefits of A.C.Ps. were erroneously granted to the employees. In the case of the petitioner the date of 2 nd A.C.P. was shifted to 04.03.2009 and the date of 3rd M.A.C.P. was sifted to 04.03.2015, and it was directed that the excess payment made to the petitioner in this regard be recovered. -2-

4. Learned counsel for the petitioner has submitted that the impugned order as contained in Annexure-3 to the writ application is absolutely illegal, in as much as, no reason has been assigned in the order as to why the dates of the grant of 2nd A.C.P. and 3rd M.A.C.P. of the petitioner have been shifted to his disadvantage. It is also submitted by learned counsel for the petitioner that in view of the decision of the Hon'ble Supreme Court of India in State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others, reported in (2015) 4 SCC334 the petitioner being a Class-3 employee, no recovery of the excess amount paid, can be made from the petitioner, even if it is found that the petitioner was not entitled to the benefits from the dates, they were originally granted to him.

5. Learned counsel for the State on the other hand has opposed the prayer and has pointed out from the counter-affidavit the reasons for which the dates of grant of 2nd A.C.P. and 3rd M.A.C.P. of the petitioner have been modified.

6. Without going into the said reasons, the fact however, remains that prior to issuance of Annexure-3, i.e., the impugned order dated 30.03.2016, no opportunity was given to the petitioner against the proposed modification in shifting the dates of A.C.P. and M.A.C.P. granted to the petitioner to his disadvantage. The fact however, remains that the benefits of the A.C.P. and M.A.C.P. were granted to the petitioner by the respondent authorities without there being any misrepresentation on the part of the petitioner, which in view of the objection of the Finance Department has since been modified. In the impugned order no ground has been assigned for such modification.

7. In Rafiq Masih's case (supra), the Apex Court has considered its earlier decisions on the point of recovery of the excess amount from the employees, and has laid down the law as follows:-

"8. 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 the employees belonging to Class III and Class IV service (or Group C and Group D service). (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery. (iii) Recovery from the 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." -3- 8. The

case of the petitioner, who admittedly is a Class-III employee of the State Government, is fully covered by the decision of the Apex Court in Rafiq Masih's case (supra). In that view of the matter the impugned order contained in Memo No. 279 dated 30.03.2016 issued by the respondent No. 3, the Director, Employment and Training, Government of Jharkhand, Ranchi, brought on record as Annexure-3 to the writ application, so far as it directs the recovery of the excess payment made to the petitioner, from his salary, cannot be sustained in the eyes of law, and the same, is hereby, quashed.

9. It is made clear that this Court has not expressed any opinion about the legality or the otherwise about the shifting of the dates of the grant of benefits of the 2nd A.C.P. and 3rd M.A.C.P. to the petitioner by the impugned order, as contained in Annexure-3 to the writ application. Since the impugned order was issued without giving any opportunity to the petitioner and without assigning any reasons, the petitioner, is hereby, given an opportunity to give representation to the respondent No. 3, The Director, Employment and Training, Government of Jharkhand, placing his claim for grant of 2 nd A.C.P. and 3rd M.A.C.P. w.e.f., the dates they were originally granted to the petitioner. The representation shall be disposed of by the respondent No. 3 by speaking order and if it is found that the benefits of 2 nd A.C.P. and 3rd M.A.C.P. had been wrongly granted earlier, and the dates thereof have been rightly shifted by the impugned order, the reasons for the same and shall be communicated to the petitioner, which the petitioner shall be free to challenge in the appropriate forum, if not satisfied with the reasons assigned. If it is found that the petitioner was entitled the benefits of 2 nd A.C.P. and 3rd M.A.C.P. w.e.f., the dates they were originally granted to the petitioner, or any dates, other than those mentioned in impugned order contained in Annexure-3, the same shall accordingly, be modified considering the representation of the petitioner. The respondent No. 3, is directed to dispose of the representation of the petitioner with reasoned order, positively within the period of four weeks from the date of filing of the representation, if any.

10. This writ application is accordingly, allowed in part, with the directions as above. (H.C.Mishra, J.) D.S.