

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 466 of 2010**

- Ram Swaroop Mishra S/o Bhukhan Lal Mishra, By Post-Retired Deputy Revenue Inspector, (Rajaswa Up Nirikshak), Municipal Corporation Bilaspur, R/o Nagar Nigam Colony, Maharana Pratap Chowk, Bilaspur, Distt.-Bilaspur, C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department of Urban Administration & Development, D.K.S. Mantralaya Bhavan, Raipur, Distt. Raipur (C.G.)
2. The Municipal Corporation Bilaspur, Through: The Commissioner/Additional Commissioner Municipal Corporation Bilaspur, Distt.-Bilaspur, (C.G.)
3. The Director/Deputy Director (Pension) Sanchanalaya Nagri Prashashan Evam Vikas Vibhag, Directorate Of Urban Administration & Development, D.K.S. Mantralaya Bhawan, Raipur, (C.G.)

---- Respondents

For Petitioner:	Shri J. A. Lohani, Advocate
For State :	Shri U.N.S Deo, Govt. Advocate
For Respondent No.2:	Ms. Pushpa Dwivedi, Advocate on behalf of Shri A.S. Kachhawaha, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/11/2015**

1. The Petitioner through the present Writ Petition has challenged the Order, Annexure P/1 dated 19.11.2009 whereby the State Government has passed an order for recovery of Rs. 28,158/- from the retiral benefits payable to the Petitioner.
2. Learned Counsel for the Petitioner submits that on an earlier occasion

Respondent No. 2 had passed similar order dated 20.04.2009 which was put to challenge under Writ Petition No. 3514 of 2009 filed on 14.07.2009. Subsequent to the filing of said Writ Petition Respondent No. 2 ordered on 14.09.2009 withdrawing the same and the Writ Petition was dismissed as had become infructuous. Now, the State Government has passed the same order overreaching earlier order passed with malafide and arbitrary manner without any authority of law. Even if the entire version of the Respondent is taken into consideration the admitted fact of the case the alleged amount of recovery ordered to be recovered from the Petitioner is the amount which has been received by him because of an error committed on part of the employees of the Respondent for which the Petitioner can not be blamed, particularly when the Petitioner has not received the said excess amount by any missappropriation, misrepresentation or fraud played by the Petitioner on the contrary it was on account of a mistake of wrong fixation made by the Respondent. Once when the said order of recovery was already withdrawn earlier by the Respondent on 14.07.2009 no justification whatsoever has been given by the Respondent, as to why subsequently another order on 29.11.2009 had to be passed.

3. The law in respect of the recovery is by now well settled by a catena of decisions starting from 1995 SCC, Supl. (1) 18 JT 1995 (1) 24 in the case of Sahib Ram Vs. The State of Haryana and Others and the most recent being the case of State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. reported in 2015 AIR SCW 501, wherein it has been repeatedly and in very categorical terms held by the Supreme Court that in the event if any excess payment has been paid to an

employee for no fault of the employee and the said amount has been paid to him without there being any misrepresentation or fraud played by the employee, the recovery of the said amount would be improper on the part of the employer. It has been held in paragraphs-11 & 12 as under:-

“11. Recovery of excess payment, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

“12. xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx

(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."

4. Admittedly, in the present case the Respondent in their reply has not taken a stand that the excess amount if has been paid to the Petitioner is because of any misappropriation or fraud on part of the Petitioner but stand of the Respondent is that excess payment has been paid because of the mistake/error on part of the employees of the Respondent. Thus for the lapses on the part of the employees of the Respondent the Petitioner cannot be punished at later stage particularly after having been superannuated, by making recovery from the pensionary benefits that are payable to an employee. In view of the law laid down by the Supreme Court on issues of recovery the present Writ Petition is allowed and the impugned order dated 29.11.2009 to the extent ordering the recovery being made from the amount

payable to the Petitioner stands quashed and the amount if has been deducted by the Respondent shall be paid to the Petitioner within a period of three months from today.

5. With the aforesaid observations the Petition is allowed.

Sd/-
(P. Sam Koshy)
JUDGE