

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.5544 of 2010

Ramnarayan Jaiswal, S/o Madan Lal Jaiswal, aged about 64 years, R/o Village Bhaiswar, Tahsil Sonhat, District Korea (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Revenue, Mantralaya, DKS Bhawan, Raipur (C.G.)
2. Collector, Korea, District Korea (C.G.)
3. Sub Divisional Officer (Revenue), Baikunthpur, Distt. Korea (C.G.)

---- Respondents

For Petitioner: Mr. Saurabh Dangi, Advocate.

For Respondents/State: Mr. Ajit Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/12/2015

1. The petitioner retired as Class-III employee (Patwari) on 26-4-2007. During his service period, by order dated 25-6-1996, he was visited with stoppage of three annual increments with cumulative effect. Now after his retirement, by order dated 2-5-2009, an amount of Rs.28,515/- was sought to be recovered from him against the recovery order originally passed. The petitioner has challenged the order of recovery.
2. Learned counsel for the petitioner submits that the petitioner was Class-III employee having retired in 2009 and he has no

other means except he is dependent upon his pension and he has no other source of income. If the aforesaid amount is recovered, it will cause great hardship to him. Learned counsel relied upon the matter of **State of Punjab and others v. Rafiq Masih (White Washer) and others**¹ and brought to the notice of this Court the parameters laid down by Their Lordships of the Supreme Court in paragraph 18, as to when recovery is impermissible in law.

3. In the case in hand, the fact remains that the petitioner was a Class-III employee who retired as Patwari way back on 26-4-2007. The original order of recovery was passed in the year 1996 and all the service benefits have already been disbursed to the petitioner. If this amount is recovered from the petitioner, it will be unjust and harsh to him, as the employer has failed to recover the amount right in time. Sub-paragraph (v) of paragraph 18 of the judgment of the Supreme Court in **Rafiq Masih's** case (supra) which summarizes the situation where recoveries by the employers would be impermissible in law, is quoted herein below: -

“(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. The above situation squarely applies to the facts and circumstances of the present case. Consequently, the order

1 (2015) 4 SCC 334

dated 2-5-2009 (Annexure P-1) for recovery of Rs.28,515/- from the petitioner being harsh, is hereby quashed.

5. The writ petition is allowed to the extent indicated herein-above.

No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma