

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1184 of 2007

- C.G. Mathai S/o Late T.P. Gabriel, aged about 64 years, Tharayil House, Pandanad (North), Kallissery, Kerala State

---- Petitioner

Versus

1. State Of C.G. Through Secretary, Forest Department, D.K.S. Bhawan, Raipur C.G. State
2. Divisional Forest Officer, Nendragarh Division, Forest Department, Manendragarh, Korea Dist, C.G. State

---- Respondent

And

WPS No. 1224 Of 2007

- Vidyanand Suryavanshi, aged about 63 years, S/o Mahanguram Suryavanshi, Retired Lecturer, R/o Village Devari, Via Ratanpur, District Bilaspur (C.G.)

---- Petitioner

Vs

1. State Of Chhattisgarh through the Secretary, Department of School Education, D.K.S. Bhawan, Raipur (C.G.)
2. The Deputy Director/Prescribed Officer (Sanction), office of Joint Director, Treasury, Account and Pension, Bilaspur Division Bilaspur (C.G.)
3. Joint Director Treasury, Account and Pension, Bilaspur Division Bilaspur (C.G.)
4. The District Treasury Officer, Bilaspur (C.G.)

---- Respondent

And

WPS No. 4578 Of 2011

- A.Siddhique, S/o Late Habiulla, aged about 60 years, working as Assistant Grade II, in District Hospital Ambikapur, District Surguja (C.G.)

---- Petitioner

Vs

1. State Of Chhattisgarh, through Health and Family Welfare Department, D.K.S. Bhawan, Raipur (C.G.)

2. The Collector, Ambikapur, District Surguja, Cg
3. The Civil Surgeon, Cum Chief Hospital Superintendent, Ambikapur, District Surguja, C.G.
4. The Joint Director, Treasury, Account And Pension, Ambikapur, District Surguja, C.G.

---- Respondent

And

WPS No. 3622 Of 2013

- Motelal Sahu S/o Late Shri Negi Ram Sahu Aged About 62 Years Retired Forester, R/o Indira Nagar, Behind New Bus Stand Pali, Post & P.S. Pali, Distt. Korba, Civil & Revenue Distt. Korba C.G. Pin 495449

---- Petitioner

Vs

1. The State Of Chhattisgarh, Through Secretary, Department Of Forest, Secretariat New Raipur, Post Secretariat and Police Station Rakhi Distt. Raipur C.G. Pin 492002
2. Chief Conservator Of Forest, Aranya Bhawan, Jail Road, Raipur, Distt. Raipur C.G.
3. Divisional Forest Officer, Korba Forest Division, Korba C.G.

---- Respondent

For Petitioners	Shri Sunil Tripathi, Advocate in WPS No.4578/11. None for the petitioners in other writ petitions.
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For respondent/State	Shri P. K. Bhaduri, GA
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Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

11/02/2016

Perused the records.

1. In WPS No.1184/2007, the petitioner, C.G. Mathai retired as Forest Ranger on 31.10.2002. The impugned order of recovery of excess salary paid to him has been passed on 30.06.2004 i.e. after his retirement.

2. In WPS No.1224/2007, the petitioner, Vidyanand Suryavanshi, retired as Lecturer on 30.06.2006. The order for recovery of difference of pay scale wrongly granted to him was passed on 25.05.2006 and 30.06.2006 at the time of his retirement.
3. WPS No.4578/2011 has been preferred by A. Siddhique, who retired as Assistant Grade-II from the District Hospital, Ambikapur on 31.12.2011. The impugned order directing recovery of excess payment made to him on account of wrong fixation of pay scale was passed few months prior to his retirement i.e. 30.07.2011.
4. WPS No.3622/2013 has been preferred by the petitioner, Motelal Sahu, who retired on 30.07.2012 as Forester, Korba Forest Division, Korba. The impugned order directing recovery of the excess payment made to him on account of wrong fixation of pay was passed on 20.05.2013 i.e. after his retirement.
5. Shri Sunil Tripathi, learned counsel for the petitioner in WPS No.4578/2011, would submit that in view of the law laid down by the Supreme Court in the matter of **State of Punjab & others Vs. Rafiq Masih (Whitewasher)**¹, the writ petitions deserve to be allowed because the recovery is made after 5 years of payment and more so when the order of recovery has been issued either immediately prior to retirement or after the retirement.
6. In the matter of **Rafiq Masih** (supra), the following has been held in para 18:-

“18. 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).

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- (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."

- 7. The impugned orders in each of the writ petitions is squarely hit by the law laid down by the Supreme Court in the matter of **Rafiq Masih** (supra), inasmuch as the recovery is in respect of payment made to the petitioners more than 5 years back. The recoveries are also made immediately prior to retirement or after the retirement. Thus, all the writ petitions deserve to be allowed in view of the law laid down by the Supreme Court in **Rafiq Masih** (supra).
- 8. Accordingly, the order of recovery in each of the writ petitions stands quashed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA