

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5239 of 2011

- Dinesh Kumar Jaiswal S/o Domralal, aged about 48 years, R/o New Bus Stand, Tower Area, Pali, Tahsil Pali, Distt. Korba, Cg

---- Petitioner

Versus

1. State Of Chhattisgarh through Secretary, Department of Health and Family Welfare D.K.S. Bhawan, Raipur (C.G.)
2. Chief Medical & Health Officer Distt. Korba, C.G.
3. Block Medical Officer, Community Health Centre, Pali, Distt. Korba, C.G.

---- Respondents

For Petitioner	Shri Sunil Otwani, Advocate
For Respondent/State	Ms. K. Tripti Rao, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

09/02/2016

1. The petitioner would call in question the impugned order (Annexure-P-1) passed by the Chief Medical and Health Officer (for short 'CMHO'), Korba on 09.08.2011 directing recovery of the difference of salary paid to the petitioner as Dresser for the fact that the petitioner's substantive post being Ward Boy, he was only entitled for the salary admissible to a ward boy and not that of a dresser.
2. Admittedly, the petitioner was appointed on Daily Wages as Ward Boy in the year 1985 and was regularized in the services on 25.10.1990. On 06.01.1994, the CMHO, Ambikapur directed the petitioner to perform the duties of a dresser, however, the petitioner was not

granted promotion or substantive appointment as dresser. The petitioner was paid salary admissible to a dresser and was also granted the revised pay scale of the said post. In the year 2011, the Office of CMHO having realized that the petitioner not being a regularly appointed or promoted dresser, he is not entitled for salary of the post of Dresser, the impugned order was passed directing recovery of the difference of salary paid to him as Dresser including the revised scale.

3. Shri Otwani, learned counsel for the petitioner, would submit that the petitioner has never claimed promotion as Dresser nor has made any misrepresentation at any point of time, therefore, if the petitioner was directed to work as Dresser and salary of the post has been paid to him, he was not at fault at any point of time and the order of recovery is arbitrary and unreasonable.
4. Learned State counsel would submit that the petitioner was not entitled for salary of the post of Dresser, therefore, he is liable to return the entire excess amount received by him during the period 1994 till the impugned order was passed.
5. Having heard learned counsel for the parties, it would manifest that the petitioner is a lowly paid employee and has consumed whatever salary and allowances were paid to him from the year 1994 till the impugned order has been passed. Moreover, the petitioner does not appear to have laid claim over the post and salary of Dresser, but was allowed to work as Dresser as stop gap arrangement.
6. In the matter of **State of Punjab and others v. Rafiq Masih (White Washer) and others**¹, the Supreme Court has held that excess payment made to any employee more than 5 years back should not be

¹ (2015) 4 SCC 334

recovered. Para 18 reads thus:-

- “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).
 - (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 Supreme Court in the matter of **Jai Gopal Sharma v. Punjab State Electricity Board and others**² has held thus in para 7:-

- “7. It is apparent that there was no dispute that the appellant was a Lineman at all material times. It is also not the respondents' case that a person who is a Lineman is not entitled to the scale of pay which the appellant has been drawing. If the appellant had been wrongly appointed as Lineman, it was for the respondents to revert him back to whichever post they felt he should occupy. As long as the appellant continued as a Lineman, the respondents could not deny the appellant the scale applicable to that post. In that view of the matter, the appeal is allowed, the impugned order dated 29.03.2004 is quashed and the decision of the High Court is set aside with no order as to costs.”

2 (2005) 11 SCC 591

8. The petitioner is also a lowly paid employee working on a Class IV post. The excess payment was made more than 5 years back, therefore, his case is squarely covered by the exception carved out by the Supreme Court in **Rafiq Masih** (supra).
9. For the foregoing, the writ petition succeeds and is allowed. The impugned order insofar as it directs recovery of the amount paid to the petitioner is quashed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

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