

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 7137 OF 2016

Kamta Prasad Saket, S/o Late Shri Rajman Prasad Saket, aged about 65 years, R/o Village & Post Kasra, Baikunthpur, District Korea (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Veterinary Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur (C.G.)
2. The Joint Director, Treasury, Accounts & Pension, Ambikapur, Surguja Division, Ambikapur, District Surguja (C.G.)
3. The Deputy Director, Veterinary Services, Baikunthpur, District Korea (C.G.)

... Respondents

For Petitioner	:	Mr. D.N. Prajapati, Advocate.
For Respondents	:	Mr. B. Gopa Kumar, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/03/2017

1. Challenge in the present writ petition is to the orders dated 28.11.2013 (Annexure P-1) and 24.12.2013 (Annexure P-2), whereby the Respondents have ordered for recovery of Rs. 1,63,892/- from the gratuity amount payable to the Petitioner.
2. Counsel for the Petitioner submits that the Petitioner in the instant case was working as Attendant (Class-IV) in the office of Respondent No.3 and he has been retired with effect from 31.10.2013 on completion of age of superannuation. That while settling the retiral dues, Annexure P-1, dated 28.11.2013, and Annexure P-2, dated 24.12.2013, have been passed whereby the Respondents have found that an excess payment of Rs.1,63,892/- has been paid to the Petitioner during his service period and therefore have ordered for recovery of the same.
3. Counsel for the Petitioner further submits that the said orders of recovery passed by the Respondents is per se illegal in the light of the judgment of Hon'ble Supreme Court in the case of *State of Punjab and Others*

v. *Rafiq Masih (White Washer) and Others*, reported in 2015 (4) SCC 334. He submits that after the Petitioner having retired from services, the Respondents could not have initiated recovery proceeding at all.

4. The impugned orders Annexure P-1, dated 28.11.2013, and Annexure P-2, dated 24.12.2013, categorically state that the amount was paid to the Petitioner on account of some wrong fixation of pay made at the hands of the officers of the Respondent-State Government. The impugned orders do not reflect any misrepresentation or any fraud to have been played by the Petitioner for obtaining the said excess payment. This fact is not disputed by the State Counsel.

5. In view of the said given admitted position, the issue involved in the present case stands squarely covered by the decision of the Hon'ble Supreme Court rendered in the case of *State of Punjab and Others v. Rafiq Masih (White Washer) and Others* [2015 (4) SCC 334], wherein it has been held as under:

- “(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D').
- (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.”

6. Admittedly, in the instant case, the Petitioner stood retired from services with effect from 31.10.2013. The notice of excess amount/order of recovery has been passed much after the order of retirement and therefore the said judgment squarely applies in the present case as well.

7. Thus, the impugned orders of recovery against the Petitioner stand quashed. It is directed that the Respondents shall forthwith release the entire payment of Rs. 1,63,892/-, with interest thereon at the rate of 6% per annum till the date of its realisation.

8. With the aforesaid direction, the writ petition stands allowed. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE

/sharad/