

HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2877 of 2013**

Mahesh Ram Gabhel S/o Goverdhan Prasad Gabhel, R/o Post Masania Kala, Tahsil & PS Sakti, District Janjgir-Champa, C.G.

---- **Petitioner**

Versus

1. State of Chhattisgarh through the Secretary Department of Water Resources, New Mantralaya, Post & PS Mandir Hasaud, Raipur C.G.
2. Executive Engineer, Minimata Bango Canal Division No. 6, Nandelibhata, Post & PS Sakti, District Janjgir Champa C.G.

---- **Respondents**

For Petitioner	:	Shri Badal Bhardwaj along with Basant Kaiwartya, Advocate
For Respondents/State	:	Shri B. Gopa Kumar, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

27/02/2017

(1) The present petition has been filed assailing the order dated 07.03.2013 Annexure P-1 as also the order dated 30.03.2013 (Annexure P-2) whereby an amount of Rs.53,829/- has been shown to be recoverable from the petitioner by virtue of certain excess payments made to him on account of wrong granting of increment.

(2) Counsel for the petitioner submits that the petitioner was appointed as Assistant Grade III on 09.02.1988 with a condition that he was supposed to pass typing examination within a period of one year which he has done on 07.01.1990. The respondents in the instant case had released the annual increment to the petitioner on his completion of one year service i.e. from 09.02.1989 on wards. Subsequently, the orders dated 07.03.2013 and 30.03.2013 Annexures P-1 & P-2 were issued after a period of about 24 years that the petitioner has been granted the benefit of increment from a wrong date and as such, the excess amount

thereby received by the petitioner had been ordered to be recovered. According to the petitioner, the order of recovery of Rs.53,829/- from the amount of gratuity payable to the petitioner is bad in law and deserves to be set aside. He submits that the petitioner has not made any misrepresentation or played any fraud for getting the said benefit and the error has occurred on the hands of the officers of the respondents, therefore, the petitioner at the time of retirement should not be punished with an order of recovery. He further submits that the issue involved in the present case is no longer res integra and it is squarely covered by the decision of the Supreme Court in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** reported in **2015 AIR SCW 501**.

(3) State counsel opposes the petition on the ground that since the petitioner had passed the typing examination after the prescribed period of one year, he would be entitled for the benefit of increment only after one year from the date of passing of typing examination. Therefore, the excess payment made to the petitioner has been ordered to be recovered.

(4) Taking into consideration the factual matrix of the case and also on perusal of the record what is an undisputed fact is that the petitioner in the present case was granted the benefit of increment because of an error on the hands of the Officers of the respondents and they did not care to rectify the same during the service period of the petitioner. Therefore, at the stage of retirement of the petitioner the order of recovery is too harsh.

(5) The law in respect of the recovery by now is 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 Rafiq Masih (supra) wherein it has been authoritatively and in very categorical terms held by the Supreme Court that in the event if any

excess payment which has been paid to an employee for no fault of his and the said amount having been paid 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 in the case of Rafiq Masih (supra) as under:-

“11. Recovery of excess payments, 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. xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx

(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.”

(6) Thus, in view of the above given facts and also the decisions of the Hon'ble the Supreme Court, this Court is of the opinion that the impugned order to the extent of recovery being made from the gratuity payable to the

petitioner is bad in law and the same deserves to be and is according set aside.

(7) If the recovery amount has been withheld from the gratuity payable to the petitioner by the respondents, the same shall be released to the petitioner forthwith with interest @ 6% per annum. It is made clear that the Respondents would have the right of rectification of the error committed minus the recovery part.

Sd/-
(P. Sam Koshy)
JUDGE