

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 1109 OF 2017

L.P. Patel, S/o Late Shri R.S. Patel, aged about 63 years, Retired Assistant Engineer, Public Works Department, Durg Circle Durg, Presently residing at House No. 46/8, Nehru Nagar (East), Bhilai- 490020, District Durg (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
2. Superintending Engineer, Public Works Department, Durg Circle, Durg (C.G.)
3. Joint Director, Funds Account and Pension, Near District Collectorate, Durg (C.G.)

... Respondents

For Petitioner	:	Mr. Sudeep Verma, Advocate.
For Respondents	:	Mr. S.P. Kale, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/03/2017

1. Challenge through the present writ petition is to the order of the Finance Department of the State Government, dated 10.5.2016, Annexure P-4, whereby there is an excess payment detected against the Petitioner of Rs.94,141/- which has been ordered to be paid by the Petitioner for the purpose of releasing his No Dues Certificate necessary for the release of his retiral dues.
2. The impugned order dated 10.5.2016, Annexure P-4, categorically states 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 order does 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.

3. 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.”

4. Admittedly, in the instant case, the Petitioner stood retired from services with effect from 31.3.2016. 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.

5. Thus, the impugned order of recovery against the Petitioner stands quashed. It is directed that the Respondents shall forthwith try to settle the retiral dues to the Petitioner, in case, if he does not suffer from any other disqualification.

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

Sd/-
(P. Sam Koshy)
Judge