

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 2100 of 2015

Khorbahra Prasad Kaushik S/o Late Sadhu Ram Kaushik, aged about 72 years, R/o Pendari, Police Station Chakarbhata, Tahsil Takhatpur, at presently residing at Ganga Nagar, Mangla, Tahsil Bilaspur, Civil and Revenue District Bilaspur (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Home Department, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (C.G.).
2. Superintendent of Police, Bilaspur, District Bilaspur (C.G.).
3. Joint Director, Treasury Account and Pension, Bilaspur, Division, District Bilaspur (C.G.).

---Respondents

For petitioner	:	Shri Shashi Bhushan Singh Patel, Advocate.
For State	:	Shri Shashank Thakur, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/06/2018

1. The challenge in the present Writ Petition is to the order of recovery issued by the Superintendent of Police, Bilaspur to the tune of Rs.70,835/- which was recovered from the retiral dues payable to the petitioner on the date of his retirement i.e. on 30/06/2003.
2. The facts of the case in brief is that, the petitioner retired from the post of ASI from the Police Department in the State of Chhattisgarh with effect from 30/06/2003. During the course of settlement of his retiral dues, the State Government detected that the petitioner has been wrongly paid certain increments which he was not otherwise entitled for. Based on the said

detection of certain erroneous payment made to the petitioner, the respondents initiated steps and recovered an amount of Rs.70,835/- from the retiral dues payable to the petitioner and paid the balance amount to the petitioner.

3. Though, the petitioner initially did not challenge the said action of the State Government so far as the recovery is concerned, but the petitioner subsequently filed a Writ Petition in the year 2015 whereby he has challenged the said action of recovery holding it to be bad in law.

4. According to the counsel for the petitioner, admittedly, the erroneous payment was made much prior to his retirement and that the petitioner was not responsible for the alleged excess payment so made. It is also contended that, the petitioner has not in any manner made any misrepresentation or have played fraud while getting such excess payment. He submits that, the department had all the powers for rectifying the error, but the payment already made that too by no fault of the petitioner could not be recovered. He further relied upon the judgment of the Hon'ble Supreme Court in the case of ***“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”*** reported in ***2015 AIR SCW 501*** for quashing the action of the respondents and prayed for refund of the amount recovered from the petitioner.

5. The State counsel however opposing the petition submits that, the petition suffers from delay and latches at the first instance and that it is a case where the doctrine of estoppel would apply against the petitioner as he

had not raised any objection while the respondents has recovered the sum from the retiral dues and has now filed the Writ Petition only after about 10 years from the date he superannuated from services. According to the respondents, since the recovery has been made by the department as early as in the year 2010 and the petitioner has filed the Writ Petition only in the year 2015 would show that, he was not in any manner aggrieved by the recovery made by the department at the appropriate time when it was executed and thus prayed for rejection of the Writ Petition.

6. Having heard the contentions put forth on either side and on perusal of record the admitted factual position as it stands is that, the petitioner was working with the police department in the State of Chhattisgarh who superannuated from services on 30/06/2003 from the post of ASI. The petitioner has been granted all the retiral dues after a recovery of Rs.70,835/- made from the retiral dues. The recovery so made was on account of certain erroneous increments being provided to the petitioner which he was not otherwise entitled for. The said wrong fixation made to the petitioner was much prior to his date of retirement.

7. Before initiating recovery proceedings, the department has not granted an opportunity of hearing of any nature and that the recovery has been unilaterally made by the department from the retiral dues which were otherwise payable to the petitioner.

8. It is also not in dispute that the said excess payment if any made to the petitioner was on account of the fault on the part of the officers of the

respondents and that the petitioner was not in any manner responsible for the erroneous excess payment that he has received.

9. Given the aforesaid factual matrix of the case if we look into the judgment of the Supreme Court in the case of Rafiq Mashi (Supra) it would clearly reveal that, the case of the petitioner falls within the situation which has been envisaged by the Supreme Court holding the recovery to be impermissible under law. Some of the situations which would be applicable in the case of the petitioner as has been laid down by the Supreme Court are as under:-

“(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.”

10. Since, the issue involves mandatory benefit and it is a case of the petitioner being deprived of his entire dues that he was otherwise entitled for on his retirement. The objection of delay and laches on part of the petitioner cannot be made applicable as the same would definitely fall within the ambit of recurring cause of action.

11. For all the aforesaid reasons this Court is of the opinion that, the action on part of the respondents in recovering an amount of Rs.70,835/- from the

retiral dues of the petitioner is bad in law and the same therefore deserve to be and is accordingly set aside and it is directed that the respondents shall forthwith release the said amount to the petitioner within a maximum period of 3 months from the date of receipt of certified copy of this order.

12. It shall be the responsibility of the petitioner to place the certified copy of the order before the respondents.

13. The petitioner however shall not be entitled for any interest on the said amount as there appears to be some delay on part of the petitioner in claiming the said relief that he is now seeking.

14. The Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit