NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 3695 of 2015

A. P. Derhe S/o Late P.R. Derhe, Aged About 65 Years Assistant Grade – II (Retd.) R/o Rajeev Vihar, Community Hall, Near Line No. 3, Rajkishore Nagar, District Bilaspur Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh Through Secretary Department Technical Education, Mahandi Bhawan, Naya Raipur And District Raipur Chhattisgarh.
2. Joint Director, Fund, Account And Pension, Raipur Division, District Raipur Chhattisgarh.
3. Principal, Industrial Training Centre, Bhilai, District Durg Chhattisgarh.
4. Director, Employment And Training, Bairan Bazar, Raipur, District Raipur Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Utkal Pradhan, Advocate.
For State	:	Shri Chandresh Shrivastava, PL.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

07/08/2018

1. The challenge in the present writ petition is to the order dated 01.09.2011 whereby the respondents have ordered for recovery of excess payment of Rs. 23,187/- which was paid to the petitioner.
2. The counsel for the petitioner submits that the petitioner was working as Assistant Grade-II with the respondent No.3 and superannuated on 30.06.2011. Subsequent to the retirement, the impugned order has been passed on 01.09.2011 stating that during the period between August, 1985 to March, 1987 and also during January, 1986 to December, 1997 the excess amount of Rs.23,187/- has been paid

to the petitioner which otherwise he was not entitled for.

3. The counsel for the petitioner submits that the present case is squarely covered by the decision of the Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334, wherein the Supreme Court has in categorical terms given certain situations under which recovery from an employee has been declared to be impermissible under the law. Some of the situations mentioned in the said judgment are as under :

> "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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
>
> (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."

4. The State counsel opposes the petition and submits that the petitioner has been granted excess payment which otherwise he was not entitled for, and therefore, prays for rejection of the petition.
5. If we consider the facts of the present case with the situations narrated by the Supreme Court in the preceding paragraph, it would reveal that, admittedly the petitioner is Class-III category employee. The petitioner was retired on 30.06.2011 and the impugned recovery order has been passed subsequent to his retirement on 01.09.2011 i.e. within one year from the date of retirement. The undisputed fact also is that the said excess payment has not been made on account of any misrepresentation or any act on the part of the petitioner, but the same has occurred only on account of mistake committed by the respondents. The error whatsoever was at the hands of the office of the respondents.
6. Given the aforesaid factual matrix of the case, this court has no hesitation in holding that the order of recovery issued against the petitioner is one which is impermissible under law as per the judgment of the Supreme Court in the case of Rafiq Masih (Supra) and as such the said impugned recovery notice is unsustainable. Accordingly, the impugned order dated 01.09.2011 deserves to be and is hereby set aside.
7. The petition stands allowed and disposed of.
8. If the amount has already been deposited by the petitioner, the same

shall be released to him forthwith within a period of 60 days from the date of production of this order, failing which the amount shall carry interest @ 9 percent per annum from the date of passing of this order till actual payment is made.

Sd/-
(P. Sam Koshy)
Judge

inder