

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1985 of 2014**

R.P.Mishra S/o Late Shri Har Prasad Mishra, aged about 63 years,
Bangali Para, Gali No.3, Sarkanda, P.S.Sarkanda, Bilaspur, District
Bilaspur (C.G.).

----Petitioner**Versus**

1. State of Chhattisgarh, Through : Secretary, Department of Tribal Welfare, Mantralaya, Mahanadi Bhawan, Raipur (C.G.).
2. Commissioner, Department of Tribal Welfare, Raipur, District Raipur (C.G.).
3. Deputy Commissioner, (Legal Cell), Department of Tribal Welfare, Bilaspur (C.G.).
4. Joint Director, Treasury, Account and Pension, Bilaspur, District Bilaspur (C.G.).
5. Accountant General, Opposite Vidhan Sabha Bhawan, Raipur (C.G.).

----Respondents

For Petitioner	:	Ms. Renu Kochar and Ms.Aparajita Gaikwad, Advocates.
For resp. No.5	:	Mr. Rajkumar Gupta, Advocate.
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/04/2018**

1. The present Writ Petition has been filed assailing the action on part of the respondents whereby an amount of Rs.1,13,134/- has been recovered from the gratuity paid to the petitioner.
2. The counsel for the petitioner submits that, the petitioner was an Accountant with the respondents who stood superannuated on attaining the age of superannuation on 30/06/2011. According to the counsel for the petitioner, after the retirement, the respondents while granting all the retiral dues deducted an amount of Rs.1,13,134/- from the gratuity paid the petitioner on the ground that there was certain excess payment made to the petitioner on account of wrong

fixation of pay which was made for the first time in the year 1981. According to the counsel for the petitioner, the petitioner is a class-III employee and the order of recovery for erroneous fixation of pay was done in the year 1981. The recovery has been made subsequent to the retirement.

3. The State counsel however opposing the petition submits that the recovery has been made in respect of the excess payment on two grounds. First is the wrong fixation of pay which was given to the petitioner and the second being that the petitioner was also wrongly granted the benefit of Kramonnati with effect from 19/04/1999 which otherwise he would not be entitled for as he had already been granted two higher pay scales and as such the recovery order cannot be said to be bad in law or erroneous in any manner. He further submits that, the petitioner at the time of his retirement also gave an undertaking of recovering any excess amount if any from his retiral dues and thus prayed for rejection of the petition.
4. Having heard the contentions put forth on either side and on perusal of record, at this juncture it would be relevant to refer to 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) 4 SCC 334*** wherein in paragraph 18, the Supreme Court while summarizing the case has given a few situations wherein recoveries by the employer would be impermissible in law.

“18. (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.”

5. In view of the aforesaid decision of the Supreme Court so also considering the facts and circumstances of the case, this Court has no hesitation in holding that the recovery of Rs.1,13,134/- from the gratuity paid to the petitioner is bad in law and the same is also held as illegal.
6. The petitioner would be entitled for refund of the entire amount recovered by the respondents.
7. Since, the amount has been recovered from the gratuity which the petitioner was entitled for, the petitioner shall also be entitled for interest on the said amount and it is ordered that the amount which has deducted from the petitioner's gratuity shall carry interest @ 6% per annum from the date of recovery till the date of payment.

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

Sd/-

(P. Sam Koshy)
Judge

Sumit