

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2294 of 2012**

Shripal Singh Son Of Shri Newa Ram Aged About 60 Years, Retired From The Post Of Company Commander, 9th Battalian, Chhattisgarh Armed Forces, Dantewada, Chhattisgarh, Presently Residing At New Suresh Nagar, Near New Water Tank, Murar, Gwalior, District Gwalior (MP).

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Home (Police) Department, DKS Bhawan, Mantralaya Raipur (CG).
2. Additional Director General Of Police (Administration), Police Head Quarters, Raipur, District Raipur, Chhattisgarh.
3. Senani, 9th Battalian, Chhattisgarh Armed Forces, Karli, District Dantewada, Chhattisgarh.
4. Joint Director Pension, Treasury And Accounts, Jagdalpur, District Bastar, Chhattisgarh.

---- Respondents

For Petitioner : Shri Abhyuday Singh, Advocate.

For State : Shri Ashutosh Pandey, Panel Lawyer.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****27/04/2018**

1. The challenge in the present writ petition is to the order dated 07.05.2012 whereby a recovery notice has been communicated to the petitioner showing a deficit balance in the GPF account of the petitioner to the tune of Rs.1,30,120/- which according to the respondents have been paid to the petitioner inadvertently on account of wrong fixation of pay.
2. The writ petition was entertained as early as on 28.06.2012 and there was a stay granted against the recovery notice which is still in operation.

3. The counsel for the petitioner submits that the petitioner retired on the post of Company Commander, 9th Battalion, CG Armed Forces, Dantewada. The petitioner was a Class-III category employee. The petitioner was to retire on 31.05.2012 and an order of recovery has been issued in the same month of which he was to retire. He submits that impugned notice would reveal that due to inadvertence on the part of respondents that too which arose more than five prior to the date of retirement of the petitioner i.e. on 01.04.2006. He further submits that the petitioner had not made any misrepresentation for getting the said erroneous fixation of pay.
4. The counsel for the petitioner further 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."

5. The State counsel opposes the petition and submits that the petitioner has been granted excess payment which otherwise he was not entitled for and the same having been detected while the petitioner was in service and the notice impugned also having been issued before his retirement, the same cannot be said to be bad in law and therefore, the petition deserves to be rejected. He also submits that the petitioner had in the meanwhile also given an undertaking while filling up pension papers so far as making recovery in the event of any wrong fixation has been made.
6. 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 was a Class-III category employee. He was to retire on 31.05.2012. The notice of recovery has been issued about 20 days prior to his retirement i.e. on

07.05.2012. The undisputed fact also is that the said wrong fixation 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.

7. 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 17.05.2012 deserves to be and is hereby set aside.
8. The petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge