

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 3085 OF 2018**

- Smt Annamma Bose, W/o Shri T. K. Chandra Bose, Aged About 75 Years, Resident Of House No.400, Vrindava Colony, Jagdalpur, Distt. Jagdalpur, Bastar, Chhattisgarh.

... Petitioner**versus**

1. State of Chhattisgarh, through Secretary, Health and Family Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur, Distt. Raipur (C.G.)
2. The Director, Health and Family Welfare Department, Indrawati Bhawan, Mantralay, New Raipur, Distt. Raipur, Chhattisgarh.
3. The Chief Medical and Health Officer, Jagdalpur, Distt. Jagdalpur(Bastar), Chhattisgarh.
4. Accountant General, Zero Point, Vidhan Sabha Road, Raipur, Distt. Raipur, Chhattisgarh.
5. Joint Director, Treasury, Account and Pension, Jagdalpur Division, Jagdalpur, Distt. Jagdalpur (Bastar), Chhattisgarh.

... Respondents

For Petitioner : Mr. Rajesh Kumar Sharma, Advocate.

For Respondents 1 to 3 : Mr. Lav Sharma, Panel Lawyer.

For Respondents 4 & 5 : Mr. Raj Kumar Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****17/04/2018**

1. The present writ petition has been filed challenging the order of recovery dated 29.6.2017 along with order dated 27.10.2006 issued by the office of the Accountant General, Raipur.
2. Facts of the case are that the Petitioner was working as a House Keeper under Respondent No.3 and superannuated with effect from 31.10.2003. It is said that subsequent to her retirement, the Petitioner has been paid all the retiral dues that were payable to her. However, in 2006, the Respondents detected that in the GPF account of the Petitioner there was a deficit balance of Rs.1,70,816/-. It is recovery of this amount for which, Annexure P-1, dated 29.6.2017, has been issued.

3. Learned Counsel for the Petitioner submits that the issue involved in the instant case is 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**. He further submits that the claim of the Petitioner squarely falls within the situations which have been reflected in the judgment of **Rafiq Masih** (supra) wherein the Petitioner falls under the category where a person who had retired much before the order of recovery/deficit balance was issued by the department. Moreover, the Petitioner on the date of retirement was working as a Class-3 employee. She falls within the situations where the amount of deficit was in respect of a period of more than 5 years prior to the date of issuance of the order of recovery, and thus prayed for the quashment of the order of recovery dated 29.6.2017.

4. Learned Counsel appearing for the Respondents opposing the petition submits that it is a case where in the year 2006 itself an order of deficit balance was issued to the Petitioner but the Petitioner failed to comply with the said order which has led to the issuance of Annexure P-1, dated 29.6.2017 now. Under the said circumstances he submits that the action of recovery is fully justified. He also opposes the petition on the ground that once when there is a finding of the department that certain excess payment has been made to the Petitioner, they are entitled to recover the same.

5. Having heard the contentions put forth on either side and on perusal of record, undisputedly, till the date of superannuation the deficit balance was not tracked down by the department. It is also not in dispute that the Petitioner was a Class-3 employee and the retiral dues have been paid to the Petitioner. That at no point of time there was any allegation of

misrepresentation or fraud on the part of the Petitioner in getting the amount which has been already paid to the Petitioner. Moreover, the excess payment whatsoever has been paid to the Petitioner also is of a period prior to the date of issuance of recovery notice dated 29.6.2017 under challenge in the present writ petition.

6. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that the case of the Petitioner does clearly fall within the situations envisaged in the judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) and for the said reason, the order of recovery becomes impermissible under law as has been laid down by the Hon'ble Supreme Court.

7. Taking into consideration the entire facts and circumstances of the case, this Court is of the opinion that the order of recovery dated 29.6.2017 thus is not sustainable and the same deserves to be and is accordingly quashed.

8. The writ petition stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge