

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 4053 of 2018

Tilak Ram Netam S/o Late Shri Sudarshan Singh Netam, Aged About 65 Years, Retired Deputy Collector, R/o Tulsipur, Ward No. 18, Tehsil And District Rajnandgaon Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, General Administration Department, Mahanadi Bhawan, New Raipur District Raipur Chhattisgarh.
2. Collector, Balod, District Balod Chhattisgarh.
3. Joint Director, Treasury, Accounts And Pension Department, Durg District Durg Chhattisgarh.

---Respondents

For petitioner	:	Shri Anup Majumdar, Advocate.
For State	:	Shri Shashank Thakur, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/06/2018

1. The challenge in the present Writ Petition is to the Annexure-P/1 dated 23/01/2017 whereby the petitioner has been asked to deposit an amount of Rs.80,310/- in respect of certain excess payment that the petitioner has received from the respondent.
2. The counsel for the petitioner submits that, the impugned order Annexure-P/1 is not sustainable and it is also impermissible under law in the light of 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***.

3. The facts of the case in brief is that, the petitioner retired from service on 31/08/2015 on the post of Deputy Collector. Subsequent to his retirement, the petitioner has been paid part payment of his retiral dues. However, remaining balance was not released at that time and after about 1 ½ years from the date of retirement, the impugned order Annexure-P/1 dated 23/01/2017 was issued asking the petitioner to deposit an amount of Rs.80,310/- towards excess payment paid to the petitioner on account of wrong fixation of pay with effect from 01/07/2006 as a consequence of implementation of 6th pay commission.

4. The order demanding a deposit of Rs.80,310/- is nothing but a demand notice from the respondent.

5. At this juncture it would be relevant to take note of 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** wherein in the concluded paragraph, the Supreme Court has given certain circumstances under which the recovery is held to be impermissible under law. Few circumstances 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.”

6. In the instant case, if we take into consideration the circumstances so mentioned by the Supreme Court it would reveal that, the alleged excess payment was made prior to about 9 years from the date of demand notice being made. Likewise, the demand notice also has been made much after the petitioner had retired from service.
7. In both the circumstances, the recovery have been held to be impermissible under law.
8. In view of the same, the impugned demand notice dated 23/01/2017 is not sustainable and the same deserve to be and is accordingly set-aside.
9. The respondents are directed to forthwith settle the retiral dues of the petitioner by paying the entire balance of retiral dues payable to the petitioner at the earliest.
10. The Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit