

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4095 of 2018

M.A. Razzaque S/o Md. Abdul Mubeen, Aged About 63 Years, Retired From The Post Of Assistant Grade- II, R/o Ward No. 15, Talapara, Bilaspur, District Bilaspur (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, P.S. Rakhi, Tahsil Aarang, Naya Raipur, District Raipur Chhattisgarh.
2. Chief Engineer, Water Resources Department, Hasdev Kachhar, Bilaspur, District Bilaspur (Chhattisgarh)
3. Sub Divisional Officer, Water Resources Sub Division, Champa, District Janjgir Champa Chhattisgarh.
4. Executive Engineer, Water Resources Division, Janjgir, District Janjgir Champa Chhattisgarh.
5. Joint Director, Accounts Treasury And Pension, Bilaspur, District Bilaspur Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Sudeep Verma, Advocate on behalf of Mr. C.Jayant K. Rao, Advocate
For State	:	Mr. Syed Majid Ali, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/06/2018

1. The challenge in the present writ petition is to the order dated 13.02.2017, whereby the respondents have ordered for recovery of an amount of Rs.26,939.30/- from the retiral dues payable to the petitioner.
2. The facts leading to the present writ petition is that the petitioner superannuated from service on 31.10.2016 from the post of Assistant Grade-II. The petitioner was paid certain retiral dues, but the entire retiral dues was not paid and now vide the impugned order after about 1 ½ years of his retirement, the respondents have ordered for recovery of an amount of Rs.26,939.30/- from the retiral dues of the petitioner on the ground that

the petitioner, while he was in service, was paid certain excess amount on account of wrong fixation of pay which was made w.e.f. 29.05.2002.

3. The counsel for the petitioner submits that the issue involved in the instant case stands squarely covered by 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 the Hon'ble Supreme Court in very categorical terms has envisaged certain situations, wherein the recovery proceedings have been held to be impermissible under law.
4. According to the petitioner in the instant case, firstly the petitioner is a retired employee, secondly the assessment of the excess amount relates to the period of more than 13-14 years prior to the date of retirement, thirdly the petitioner was not in any manner responsible for the alleged excess payment if any paid to the petitioner and lastly, the petitioner was admittedly a class-III employee and as such falls within the category of low paid employee. All these situations herein above according to the petitioner are the situations which have been envisaged by the Hon'ble Supreme Court in the case of ***"Rafiq Masih"*** (supra) holding such recovery to be bad in law and as such the impugned order in the instant case is not sustainable and prays for quashment of the same.
5. The State counsel on due verification of the record admits the factual matrix, so far as what has been submitted by the counsel for the petitioner in respect of the excess payment made. However submits that since admittedly certain excess payment have been made to the petitioner, the respondents have right to recover the same for the reason that the petitioner would not be entitled for what he is otherwise not legally entitled.

6. Having heard the contentions put forth on either side and on perusal of record, it would be relevant at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of "**Rafiq Masih**" (supra), wherein the situations as envisaged by the Hon'ble Supreme Court where the recovery have been held to be impermissible in law 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."

7. In the light of the aforesaid authoritative decision of the Hon'ble Supreme Court, in the opinion of this Court, the case of the petitioner also squarely falls within the situations so subscribed by the Hon'ble Supreme Court in its order, wherein the recoveries of similar nature have been held to be impermissible under law.

8. Accordingly, the present writ petition stands allowed and the impugned order of recovery stands set-aside/quashed. It is ordered that the petitioner shall be entitled for the entire retiral dues payable at the earliest and which shall be released forthwith without any further delay.

Sd/-
(P. Sam Koshy)
Judge

Ved