

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4328 of 2018**

1. Smt. Sahodra Verma W/o Late Y.R. Painkra, Aged About 63 Years Retired Supervisor, R/o Village And Post Rajpur, Block Lailunga, District Raigarh Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Woman And Child Development Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Post Office Rakhi, District Raipur Chhattisgarh.
2. Commissioner, Woman And Child Development Department, Indirawati Bhawan, Naya Raipur Chhattisgarh.
3. The Joint Director, Treasury Account And Pension, Bilaspur Division, Bilaspur, District Bilaspur Chhattisgarh.
4. The Senior Account Officer, Office Of Accountant General, Raipur, District Raipur Chhattisgarh.
5. The District Programme Officer, Woman And Child Development Department, Raigarh, District Raigarh Chhattisgarh.
6. The Project Officer, Unified Child Development Project, Lailunga, District Raigarh Chhattisgarh.

---- Respondents

For Petitioner	:	Shri VK Pandey, Advocate.
For State	:	Shri SP Kale, Dy. Advocate General.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/07/2018**

1. The challenge in the present writ petition is to the order dated 16.03.2018 whereby the respondents have ordered for recovery to be made from the retiral dues payable to the petitioner to the tune of Rs.50,847/-.
2. The counsel for the petitioner submits that the impugned order itself reflects that recovery is by way of some alleged excess payment made to the petitioner and the said excess payment was made about 11-12 years prior to issuance of order of recovery. Further, since the

petitioner has already retired from service, the impugned order of recovery is impermissible. He further submits that the petitioner had not made any misrepresentation for getting the said excess payment.

3. 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.”

4. The State counsel opposes the petition and submits that the petitioner has been granted excess payment which otherwise she was not entitled for and therefore, prays for rejection of the petition.
5. 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 is Class-III category employee. The excess payment was made about 11-12 years prior to the date of recovery. The undisputed fact also is that the said excess payment 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.
6. 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 16.03.2018 deserves to be and is hereby set aside.
7. The petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge