NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4309 of 2018

Mannu Lal Pansari S/o Khedu Ram Pansari, aged about 62 years, Retired From the post of Research Officer, Tribal Research and Training Institute, Jagdalpur, District Bastar (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Schedule Caste and Schedule Tribe Development Department, Mahanadi Bhawan, Mantralaya, P.S. Rakhi, Tahsil Aarang, Naya Raipur, District Raipur (C.G.).
2. Director, Schedule Tribe Research and Training Institute, Raipur (C.G.).
3. Joint Director, Accounts, Treasury and Pension, Raipur (C.G.).
4. District Treasury Officer, Jagdalpur, District Bastar (C.G.).

---Respondents

For petitioner	:	Shri C.J.K.Rao, Advocate.
For State	:	Shri Syed Majid Ali, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/07/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/1 dated 25/05/2018 whereby the respondents have issued an order of recovery to the tune of Rs.2,11,407/- from the retiral dues payable to the petitioner.

2. The counsel for the petitioner submits that, the impugned order is per-se illegal and it is impermissible under law in the light of the recent decision 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***. The counsel for the petitioner further submits that, the petitioner in the

instant case was to retired on 31/05/2018 and barely 6 days before his retirement, the respondents have issued an order of recovery – Annexure-P/1. He further submits that, the said order of recovery is bad in law for the reason that, the recovery so ordered is for the alleged excess payment made to the petitioner wayback in August-2007 when it is alleged that certain additional increments have been paid to the petitioner. According to the counsel for the petitioner, since an error committed by the respondents was of the period prior to about 11 years from the date of retirement and he was to retire just 6 days from the date of issuance of recovery order, the same becomes impermissible under law. He further submits that, the petitioner was not at fault at any point of time for the alleged excess payment that he has received and thus prayed for setting aside of the impugned order – Annexure-P/1.

3. The State counsel however opposing the petition submits that, it is a case where the error was detected before the petitioner's retirement and it is found that he has been paid something excess which he was not otherwise legally entitled for and therefore the same cannot be said to be bad in law and thus prayed for rejection of the Writ Petition.

4. Given the aforesaid factual matrix of the case if we look into the judgment of the Supreme Court in the case of Rafiq Mashi (Supra) it would clearly reveal that, the case of the petitioner falls within the situation which has been envisaged by the Supreme Court holding the recovery to be impermissible under law. Some of the situations which would be applicable

in the case of the petitioner as has been laid down by the Supreme Court 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."***

5. Considering the facts of the present case it would clearly reveal that, the situations laid down by the Supreme Court under which the recovery becomes impermissible squarely applies in the case of the petitioner also, as the recovery made is just 6 days before his retirement. The petitioner was not at fault for the excess payment made to him.

6. Lastly, the excess payment have been made about 11 years prior to the date of issuance of recovery order and therefore the present Writ Petition deserve to be and is allowed. The impugned order – Annexure P/1 dated 25/05/2018 stand set aside/quashed.

7. It is directed that the respondents shall ensure releasing the entire retiral dues payable to the petitioner without any further delay.

8. The Writ Petition accordingly stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit