

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 7096 of 2017**

Smt. Prem Kumari W/o J L Kesharwani Aged About 62 Years R/o Kali Mai Ward, Mungeli, Ward No. 14, Upadhyaypara, Near Naya Pani Tanki, Tahsil And District Mungeli, Chhattisgarh.

----Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary , Department Of Health And Medical, Mahanadi Bhawan, Mantralaya New Raipur, District Raipur, Chhattisgarh.
2. Chief Medical And Health Officer, District Hospital Mungeli, District Mungeli, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/04/2018**

1. The challenge in the present writ petition is to the order dated 22.11.2017, whereby the respondents have issued an order of recovery to the petitioner to the tune of Rs.2,22,237/-. The said excess amount has been by virtue of the alleged erroneous fixation of pay provided to the petition in between 01.04.2006 to 01.07.2017.
2. The brief facts of the case is that the petitioner in the instant case was a Nursing Sister working under the respondent No.2 and stood retired from service on attaining the age of superannuation on 28.02.2017. On 08.02.2017, the respondent No.2 issued an order asking the petitioner to deposit an amount of Rs.21,473/- which the petitioner has been erroneously granted on account of wrong fixation of pay. The said amount was paid by the petitioner voluntarily without any objection by way of a challan on 09.02.2017 and as such order

Annex.P/2 stood duly complied with.

3. Subsequently, the petitioner retired from service on 28.02.2017 and Annexure P/1 has been passed on 22.11.2017, whereby an order of recovery to the tune of Rs.2,22,237/- has been passed against the petitioner after adjusting the earlier amount deposited by the petitioner on 09.02.2017. It is this action which is under challenge in the present writ petition.
4. The contention of the petitioner is that the said impugned order is bad in law for the reason that the impugned order has been passed firstly after the petitioner has retired from service, secondly, she has not being granted an opportunity hearing, and thirdly, such recovery is 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) 4 SCC 334***, and thus prayed for the quashment of the same.
5. The State counsel however opposing the petition submits that it is a case where the petitioner was granted certain benefits, which otherwise she was not entitled for. According to the petitioner in between 01.04.2006 to 01.07.2017 on account of wrong fixation of pay, the petitioner has been granted certain excess amount erroneously, which is being recovered by issuance of Annexure P/1 dated 22.11.2017.
6. According to the State counsel, the petitioner was not entitled for the said fixation of pay and that on rectification it was found that an excess amount of Rs.2,22,237/- was paid in excess to the petitioner.

He further submits that Annexure P/1 itself is notice whereby the petitioner has been granted an opportunity to deposit the excess payment which itself shows that it is an opportunity of hearing being provided to the petitioner. The petitioner should have responded to the authorities bringing his grievances to the authorities and as such Annexure P/1 does not get the protection provided under the judgment of Hon'ble Supreme Court in the case of **“Rafiq Masih”** (supra). He further relied upon the judgment of Hon'ble Supreme Court in the case of **“High Court of Punjab and Haryana & Others vs. Jagdev Singh”** reported in **(2016) 14 SCC 267**.

7. From the aforesaid factual matrix of the case, what stands undisputed is the fact that the petitioner retired from service w.e.f. 28.02.2017. The petitioner before retirement was issued with an order of recovery to the tune of Rs.21,473/-. The petitioner duly complied with the said amount.
8. Subsequently, after about 8 months period from the date of retirement, the impugned order (Annex.P/1) has been passed. The fact which cannot be brushed aside is that the alleged excess payment paid to the petitioner was not on account of any misrepresentation or fraud played by the petitioner in any manner. The excess amount which has been paid has been purely on account of the error at the hands of the officials of the State Government. The order of recovery has been issued much after the date of retirement. The petitioner also undisputedly falls within class-III category of employee.
9. Likewise it is also not in dispute that the alleged error of wrong

fixation of pay for the first time took place in the year 2006 and the impugned order is now being passed after more than 12 years.

10. At this juncture it would be relevant to refer to the judgment of Hon'ble Supreme Court in the case of Rafiq Masih (Supra) wherein in paragraph 18, the Supreme Court while summarizing the case has given a few situations wherein recoveries by the employer would be impermissible in law.

“18. (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.”

11. In the light of the aforesaid judicial pronouncement of the Supreme Court which still holds the field, if we look at the facts of the present

case, more than half of the situations referred to by the Supreme Court in the case of Rafiq Masih (Supra) attracts the facts of the present case which would make the recovery impermissible. Some of those situations which attracts the case of the petitioner is that the petitioner belongs to class-III or Group-C category of service, the recovery from the retired employees, the excess payment allegedly made to the employee was for a period in excess of 5 years before the order of recovery was passed.

12. In the instant case, the alleged wrong fixation of wages was first paid to the petitioner about 12 years back i.e. in 2006. The case of the petitioner would fall in all the three situations mentioned in the preceding paragraphs.

13. So far as the judgment of Jagdev Singh (Supra) relied upon by the counsel for respondent/State is concerned, the facts of the said case is quite distinguishable on its facts itself. In the said case, the wrong fixation was not very old. In the said case, for grant of fixation of a particular scale, the petitioner himself had given an undertaking that in the event the fixation is found to be wrong, the excess amount could be recovered unlike in the instant case.

14. So far as the undertaking given by the petitioner while filing up of the pension papers are concerned, those are formalities which is completed as a matter of routine in all case while the employee retires and the pension papers are processed and those would not be of much relevance when the facts of the case is otherwise hit by the judgment of the Supreme Court in the case of Rafiq Masih (Supra).

15. Given the aforesaid facts and circumstances of the case, the impugned order of recovery passed by the respondents vide Annexure-P/1 is not sustainable and the same in the light of the judgment in the case of Rafiq Masih (Supra) is impermissible and therefore the same deserve to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Sumit