

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 4491 of 2018

Chhabi Lal Sirdar S/o Govind Singh Sirdar, aged abt 62 years,
Retired Inspector (Police), R/o Q.No.248, sector 6 Kamal Vihar, Dunda
– Tikarapara, Raipur, District Raipur (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Home Ministry, Mahanadi Bhawan, Naya Raipur, PS Rakhi, District Raipur (C.G.).
2. Superintendent of Police, Durg, District Durg (C.G.).

---Respondents

For petitioner	:	Shri Chitranjay Singh Patel, Advocate.
For State	:	Shri Syed Majid Ali, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/07/2018

1. With the consent of the parties, the matter was heard finally.
2. The challenge in the present Writ Petition is to the order Annexure-P/1 dated 24/03/2018 which is an order of recovery showing an amount of Rs.4,33,420/- to be recovered from the petitioner.
3. In the instant Writ Petition, the petitioner was working with the respondents as an Inspector in the Police Department and stood retired from services with effect from 31/05/2018. Immediately before his retirement, Annexure-P/1 was issued whereby the department has shown that the petitioner has been paid an excess amount on account of some wrong fixation which was made and the excess amount was to the tune of

Rs.4,33,420/- which was to be recovered from the petitioner and it was directed that the petitioner make good the refund of the said excess amount so that his retiral dues could be released promptly.

4. The counsel for the petitioner submits that, it is a case where the excess amount alleged to have been made to the petitioner was not on account of any misrepresentation or any fraud played by the petitioner, but the excess payment has been made only on account of fault on part of the officers of the respondents who had prepared the salary and other bills of the petitioner. He further submits that, even otherwise, the said excess amount cannot now be recovered as the Hon'ble Supreme Court has categorically held it to be impermissible under law in the judgment of ***"State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc."*** reported in ***2015 AIR SCW 501***. He further submits that, even the excess payment which has been made seems to have been made to the petitioner much earlier to the date of retirement and this also is a ground on which the recovery cannot be made by the respondents. He further submits that, the Supreme Court as well as this High Court has been repeatedly allowing the Writ Petitions of similar nature holding the said recovery to be impermissible under law and therefore prayed for setting aside of the impugned order.

5. The State counsel however opposing the petition submits that it is a case where the petitioner while in service itself was found to have been paid certain excess amount which otherwise he was not legally entitled for and when the error was found, the respondents have initiated steps for

recovering the excess amount which cannot be said to be bad in law and thus prayed for rejection of Writ Petition.

6. Given the aforesaid factual matrix of the case if we look into the judgment of the Supreme Court in the case of Rafiq Mashhi (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.”

7. If we consider the aforesaid situations and consider the facts of the present case it clearly reflects that, the case of the petitioner falls in most of the situations so envisaged by the Supreme Court, like the impugned order having been issued just 2 months before the petitioner was to superannuate, the amount which has been paid to the petitioner was much prior to the date of retirement, the excess payment paid to the petitioner was for on no fault

on part of the petitioner so also the petitioner falls within the category of class-3 employee in the State Government cadre.

8. Given the aforesaid factual matrix of the case and also taking note of the position of law laid down by the Supreme Court in the case of Rafiq Masih (Supra) this Court is of the opinion that, the impugned order Annexure-P/1 is not sustainable and the same deserve to be and is accordingly set aside.

9. The Writ Petition accordingly stands disposed off with a further direction to the respondents to ensure that the retiral dues payable to the petitioner be released at the earliest if there is no other impediment.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE