

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4578 of 2018**

Bhaagiram Kashyap S/o Late Dharam Kashyap Aged About 63 Years
R/o Village Dulari Nagar, Rudri, Tahsil And District Dhamtari,
Chhattisgarh.

---- Petitioner**Versus**

1. The State Of Chhattisgarh Through Secretary, Ministry Of Home Department, Mahanadi Bhawan New Raipur, District Raipur, Chhattisgarh.
2. The Dy. Director, General Of Police (Administrative) Police Head Quarter Raipur, District Raipur, Chhattisgarh.
3. The Inspector General Of Police, Raipur Range, District Raipur, Chhattisgarh.
4. The Superintendent Of Police, District Dhamtari, Chhattisgarh.
5. Station House Officer, Police Station Rudri, District Dhamtari, Chhattisgarh.
6. Joint Director, Treasury Accounts And Pension Department, Raipur, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Rajkumar Pali, Advocate
For State	:	Mr. Syed Majid Ali, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****20/07/2018**

1. The challenge in the present writ petition is to the order Annexure P/1, which is an order of recovery issued against the petitioner to the tune of Rs.83,376/- from the leave encashment amount which was payable to the petitioner.
2. The facts of the case is that the petitioner was appointed as a Constable under the respondents in the year 1981 and in due course of time by virtue of periodical promotions reached to the post of Sub-Inspector, on which post he retired on attaining the age of superannuation on 31.08.2017. After the retirement from his service the

respondents abruptly now has issued the impugned notice Annexure P/1, whereby the respondents have shown that from the dues payable to the petitioner, an amount of Rs. 83,376/- has to be recovered, which was paid in excess to the petitioner while he was in service.

3. The State counsel on instructions states that the recovery order pertains to the excess payment made to the petitioner while he was in service.
4. Given the aforesaid facts and circumstances of the case, particularly taking note of the fact that 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***” has laid down certain conditions/situations under which the recovery has been held to be impermissible under law. Some of the situations are:
 - (i) The recovery cannot be made at the fag end of the service carrier,
 - (ii) The recovery cannot be made from the low paid employees or class-III/class-IV cadre employees.
 - (iii) The recovery cannot be made in case if the excess amount has been paid to the employee on no fault of his.
5. The excess amount paid to the petitioner was of a period much prior to the date of recovery being issued. If we consider the factual matrix of the present case, all the aforesaid situations which have been laid down by the Hon'ble Supreme Court under which a recovery has been held to be impermissible under law falls within the four corners of the present case. So far as the case of the petitioner is concerned, admittedly the impugned notice of recovery has also been issued much after the petitioner had retired from service.

6. Likewise the excess amount paid to the petitioner was also of a period much prior to the date of retirement. It is nobody's case that the petitioner was responsible for the excess amount that he has otherwise received. It is also not in dispute that the petitioner is a class-III rank officer in the police department.
7. For all the aforesaid submissions, the impugned order of recovery is not sustainable and the same deserves to be and is accordingly set-aside/quashed. It is further directed that the respondents shall ensure that the retiral dues payable to the petitioner is released forthwith without any further delay.

Sd/-
(P. Sam Koshy)
Judge

Ved