

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6063 of 2018**

Tajul Haque S/o Late Sirajul Haque Aged About 62 Years
Occupation- Company Commander (Retired) Under The 17th B. N.
C.G. Arms Force Kabirdham, R/o Yadunandan Nagar, Bilaspur,
Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Home Police Affairs And Finance Department, Mahanadi Bhawan, New Mantralaya, Raipur, Chhattisgarh.
2. The Director General Of Police Police Head Quarter, Raipur, District Raipur, Chhattisgarh.
3. The Joint Director Treasury, Account And Pension, Durg, District Durg, Chhattisgarh.
4. The Commandant 17 Bn. Special (I/R) Battalion, Chhattisgarh Arms Force Kabirdham, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Palash Tiwari, Advocate
For State	:	Mr. R.K. Gupta, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****28/09/2018**

1. The challenge in the present Writ Petition is to the order (Annexure P/1) whereby the respondents have issued the order dated 30.06.2018 issuing for recovery of an amount of Rs.1,33,711/-.
2. The counsel for the petitioner submits that the said amount has been recovered from the retiral dues payable to the petitioner on his retirement. The petitioner stood retired from service on 30.06.2018. The challenge to the said order of recovery is on the ground that 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 AIR SCW 501**, the present case is one which can be held to be impermissible under law.

3. The counsel for the petitioner submits that Annexure P/1 reflects that the excess payment allegedly made to the petitioner was of the year 2009 and the recovery has been effected after a period of more than 9 years. He further submits that the petitioner was working as a class-III employee under the respondents. He further submits that it is not a case of the respondents, where the excess payment has been received by the petitioner on account of some misrepresentation or fraud played by the petitioner. The excess payment, if at all paid, was on account of the error or fault on the part of the officers of the respondents and thus prayed for quashment of the same.
4. Considering the nature of dispute, which is otherwise not disputed by the State counsel from perusal of the contents of the writ petition as also the documents attached to it, it would be relevant at this juncture to refer to the situations under which the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) as held that the recovery would be impermissible under law. The situations as envisaged in the said judgment 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. Given the aforesaid factual matrix as also the legal positions as has been laid down by the Hon'ble Supreme Court in the aforesaid judgment, this Court is of the opinion that the case of the petitioner squarely falls within the situations so prescribed by the Hon'ble Supreme Court in its order, wherein the recoveries of similar nature have been held to be impermissible under law. The order of recovery thus is bad in law and the same deserves to be and is accordingly set-aside.
6. The amount so recovered by the respondents from his retiral dues has to be forthwith recounted and the petitioner would also be entitled for any other dues which are payable to him, which cannot be withheld on account of recovery proceedings.
7. With the aforesaid observations, the present writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge