

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6206 of 2018**

Harshvardhan Shrivastava (H.V. Shrivastava) S/o Shri K. K. Shrivastava, Aged About 62 Years, R/o House No. 472, Vikas Vihar Colony, Mahadev Ghat Road, Raipur, District- Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, Water Resources Department, Mantralaya, Mahanadi Bhawan, Raipur, Chhattisgarh.
2. The Executive Engineer, Hasdev Nahar Jal Prabandh Sambhag, Janjgir, Distirct- Janjgir-Champa, Chhattisgarh.
3. The Sub Divisional Officer, Janjgir Shakha, Nahar Up Sambhag Karamank 1, Janjgir, District- Janjgir-Champa, Chhattisgarh.
4. The Joint Director Treasury, Account And Pension, Bilaspur, Chhattisgarh.
5. Accountant General, Vidhan Sabha Road, Raipur, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Alok Kumar Pandey, Advocate
For resp.No.5	:	Shri Rajkumar Gupta, Advocate
For State	:	Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11/12/2018**

1. The challenge in the present writ petition is to Annexure P/2 dated 02/11/2017 whereby the respondents have issued an order of recovery of Rs.1,76,985/-.
2. The facts of the case is that, the petitioner was working as a Sub-Engineer under the respondents. The petitioner has attained the age of superannuation on 30/04/2018. From the date of retirement, the impugned order Annexure-P/2 has been issued within a period of 1 year.
3. From plain reading of Annexure-P/2 it reveal that, there was an erroneous excess fixation of pay made to the petitioner when the 6th pay commission was introduced from 01/01/2006 and certain

erroneous payment were also made with effect from 01/07/2008 till 31/12/2015. It is this excess amount which has been ordered to be recovered from the petitioner.

4. The contention of the counsel for the petitioner is that, since the petitioner was left with less than 6 months of service on the date when the impugned order was issued, it became impermissible under law in the light of the judgment passed by 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***. He further submits that, it is not a case of the State Government that the said amount has been paid to the petitioner on account of any misrepresentation or fraud played by the petitioner rather the fault was on part of the officers of the department and for these reasons, he prayed for quashment of the same.
5. The State counsel however opposing the petition submits that, since the last date of payment which was made to the petitioner was on 31/12/2015, it cannot be said to be a belated excess payment which has been ordered to be recovered. According to her, since the petitioner has been granted something which he would not entitled for under the service rules and when the error was detected, the department has initiated steps for recovering the same and therefore also it cannot be said that the action on part of the respondents was erroneous.
6. At this juncture it would be relevant to refer to 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 Hon'ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery is totally 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.”

7. Perusal of these situations it would reveal that, the impugned order was firstly issued within a period of less than one year from the date of retirement. Secondly, the petitioner has not made any misrepresentation for obtaining the said benefit. Moreover, the petitioner has stood retired from service on 30/04/2018.
8. Under the circumstances, the case of the petitioner also stands squarely covered by the judgment of Rafiq Masih (Supra).
9. The impugned order therefore is not sustainable and the same deserves to be and is accordingly set-aside/quashed.
10. It has been informed by the petitioner that though the petitioner has retired on 30/04/2018 and that there is no other other Departmental

Enquiry or Disciplinary Proceedings pending against the petitioner at the time of retirement, yet he has not been paid any retiral dues. Even the petitioner has not been granted the pension that he is otherwise entitled for.

11. In the given facts it is directed that the respondent authorities shall take all necessary steps to ensure that the retiral dues and pensionary benefits payable to the petitioner is released forthwith at the earliest preferably within a period of 60 days from the date of receipt of copy of this order.

12. The excess amount deducted by the respondents in the light of Annexure-P/2 shall be refunded to the petitioner within the same period.

13. Needless to mention that this Court has interfered only with the recovery part, however the State would be entitled for any prospective rectification of the erroneous fixation of pay and allowances and its impact on the future payment.

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

**Sd/-
(P. Sam Koshy)
Judge**

Sumit