

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.6424 OF 2018**

Domar Singh Thakur S/o. Late Keju Ram Thakur, Aged About 62 Years Retired Inspector (M), R/o Sitamani Ramesh Gali, House No. 287, Korba, District Korba Chhattisgarh.

...Petitioner(s)

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home, Atal Nagar Mahanadi Bhawan, New Raipur (Chhattisgarh).
2. Director General Of Police, Police Headquarter, Atal Nagar, New Raipur Chhattisgarh.
3. Superintendent Of Police, Police Training School, Rajnandgaon, District Rajnandgaon Chhattisgarh.

... Respondent(s)

WRIT PETITION (S) NO.6426 OF 2018

Santosh Kumar Shrivastava S/o Late Ishwari Prasad Shrivastava Aged About 62 Years Retired S. I. (M) R/o 41, Shristi Coloney, Kamla College Road, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

...Petitioner(s)

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home, Atal Nagar Mahanadi Bhawan, New Raipur (Chhattisgarh).
2. Director General Of Police, Police Headquarter, Atal Nagar, New Raipur Chhattisgarh.
3. Superintendent Of Police, Police Training School, Rajnandgaon, District Rajnandgaon Chhattisgarh.

... Respondent(s)

WRIT PETITION (S) NO.6441 OF 2018

Bhavsingh Tandon S/o Late F R Tandon Aged About 62 Years Retired Nursing Ardhal, R/o Ward No - 16, New Dhaba Rajnandgaon District Rajnandgaon Chhattisgarh.

...Petitioner(s)

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home, Atal Nagar Mahanadi Bhawan, New Raipur (Chhattisgarh).
2. Director General Of Police, Police Headquarter, Atal Nagar, New Raipur Chhattisgarh.
3. Superintendent Of Police, Police Training School, Rajnandgaon, District Rajnandgaon Chhattisgarh.

... Respondent(s)

For Petitioners	:	Shri Somkant Verma, Advocate.
For Respondent-State	:	Ms. Sunita Jain, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28.09.2018

1. The challenge in these petitions is to the order dated 19.09.2018 (Annexure P/2) whereby the respondents have issued an order of recovery of an amount of Rs.2,12,531/-, Rs.1,96,303/- and 1,44,636/- respectively from the retiral dues of the petitioners. The recovery so made is on account of erroneous payment of the allowance payable for serving in the naxalite area.
2. The contention of the petitioners are that, the petitioners have already retired from service w.e.f. 31.07.2018, 30.06.2018 and 31.05.2018 respectively and that the said benefit has been extended to various employees and that there is no mis-representation or fraud played by the petitioners for obtaining the the said allowance. He further submits that the petitioners are Class-III employees. The said allowance was paid to the petitioners right from 2013 onwards and it is now after the petitioners are retired, the respondents have taken a decision holding that the petitioners are not entitled for the said allowance. Further, the said order of recovery is bad in law in the light of the judgment of the Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334.
3. The State counsel opposing the petitions submits that the impugned order of recovery reflect that there was some undertaking given by the petitioners in the year, 2013 itself when the allowance were released and therefore if now the department has now found that the petitioners have been erroneously granted the said allowance and the respondents have issued a recovery order, the petitioners should not have any grievance. Thus, prayed for rejection of the petitions.
4. Having heard the counsel on either side and on perusal of records, the undisputed fact is that the said allowance has been paid to the petitioners and many other similarly placed employees. The said allowance has been

paid to the petitioners right from 2013 onwards. The decision of the State Govt. that the petitioners have been wrongly paid the said allowance was subsequent to the petitioners having superannuated from service. The decision with regard to dis entitlement of the said allowance was taken by the State on 07.09.2018.

5. It is also not a case of the State that the said allowance has been paid to the petitioners on account of mis-representation or fraud played by the petitioners, but on the contrary has been paid erroneously at the hands of the officers of the respondents.
6. Given the said facts, this court is of the opinion that the case of the petitioners would squarely fall within the situation which are referred to by the Supreme Court in case of Rafiq Masih (Supra) and in the light of the decision of the Supreme Court such recovery become impermissible under the law. For ready reference, the situations mentioned in the said judgment is reproduced herein as under :

“18.. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (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 facts of the present case with the situations narrated by the Supreme Court in the preceding paragraph, it would reveal that, admittedly the petitioner is Class-III category employee. The undisputed fact also is that the said erroneous allowance has not been made on account of any misrepresentation or any act on the part of the petitioners, but the same has occurred only on account of mistake, if any, committed by the respondents.
8. Given the aforesaid factual matrix of the case, this court has no hesitation in holding that the order of recovery issued against the petitioners are one which is impermissible under law as per the judgment of the Supreme Court in the case of Rafiq Masih (Supra) and as such the said impugned recovery notice is unsustainable. Accordingly, the impugned order dated 19.09.2018 (Annexure P/2) deserves to be and is hereby set aside.
9. All the petitions stand allowed and disposed of.

Sd/-
(P. Sam Koshy
Judge