

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 6955 of 2018

Shishu Dhar Sharma S/o Late Shri Devdhar Sharma, Aged About 64 Years, Retired B.E.T.O., R/o 185, Har Shringar, Rajkishore Nagar, Near Samudayik Bhawan, Tahsil And District Bilaspur, Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh.
2. The Chief Medical And Health Officer Bilaspur, District Bilaspur Chhattisgarh.
3. Joint Director, Treasury, Account And Pension, Bilaspur Division, District Bilaspur, Chhattisgarh.

---Respondents

For petitioner	:	Shri Vivek Kumar Pandey, Advocate.
For State	:	Shri Ratan Pusty, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/10/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/1 dated 30/05/2016 and to the order dated 21/06/2016 whereby the respondents have ordered for recovery of an amount of Rs. 5,60,851/- from the petitioner.
2. The facts of the case in brief is that, the petitioner who was working as a Block Extension Training Officer (BETO) retired from service on 29/02/2016.
3. Subsequently, after some time, the impugned orders have now been passed seeking for recovery of an amount of Rs.5,60,851/- which is alleged

to have been paid to the petitioner during the period 01/04/2006 to 29/02/2016.

4. The contention of the counsel for the petitioner is that, the petitioner at no point of time was responsible for receiving of an excess payment if any. He further submits that, the petitioner has not made any misrepresentation or played fraud for obtaining the same. He further contended that, the order of recovery also having been passed after retirement which is impermissible in the light of the judgment passed by the Hon'ble Supreme Court in the case of **State of Punjab and Ors. etc. v. Rafiq Masih (White Washer) etc.** [2015 AIR SCW 501].

5. The State counsel however opposing the petition submits that, it is a case where the petitioner has been paid something which he is not otherwise legally entitled for and the moment it was detected by the department, it immediately issued orders asking the petitioner to deposit the amount. He further submits that, such an order is permissible as the department is liable to recover any excess amount paid to the petitioner which he was not legally entitled for under the service rules and therefore prayed for rejection of the Writ Petition.

6. Having heard the contentions put forth on either side and on perusal of record, admittedly, the impugned notice has been passed after his retirement which was on 29/02/2016. The petitioner it appears was a class-3 employee. Moreover, the alleged excess payment has been paid to the

petitioner for the first time about 10 years prior to the date of retirement i.e. from 01/04/2006 onwards.

7. At this juncture it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of Rafiq Mashhi (Supra). 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.”

8. Given the aforesaid legal position as has been laid down by the Supreme Court in the case of Rafiq Masih (Supra) so also considering the admitted factual matrix of the present case as has also been reflected in the preceding paragraphs, this Court is of the opinion that the impugned order so far as issuance of an order of recovery is bad in law and it is impermissible under law.

9. So far as financial matters are concerned where an excess payment has been made, it has been held by the Supreme Court that the authorities have the power for carrying out rectification part, but they do not have power for recovering an amount which has already been paid to the employee and which the employee has received for no fault of his/her and has also spent the same in due course of time.

10. In the given facts, present Writ Petition deserve to be and is accordingly allowed.

11. The impugned orders so far as the order of recovery is concerned stands set-aside/quashed.

12. This Court makes it clear that so far as correction or rectification is concerned, the respondents have the power to rectify the error which has been detected.

13. However, the petitioner's right is also reserved to question the rectification by making a suitable representation to the authorities concerned.

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

Sd/-

(P. Sam Koshy)
JUDGE

Sumit