

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 7763 of 2018

Tusharkant Swanrwanshi S/o Late Bhuneshwar Lal Aged About 54 Years Time Keeper, Working At Office Of Public Works Department (B/R), Sub- Division- Narharpur, District Kanker Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of Public Works, Atal Nagar Mahanadi Bhawan, New Raipur Chhattisgarh.
2. Executive Engineer Public Works Department (B/R), Division- Kanker, District Kanker Chhattisgarh.
3. Sub- Divisional Officer Public Works Department (B/R), Sub- Division- Narharpur , District Kanker Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Somkant Verma, Advocate
For State	:	Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/11/2018

1. The order under challenge is Annexure P/1 dated 05.11.2018, whereby the respondents have issued for an order of recovery of an amount of Rs.1,20,423/- as an excess amount paid to the petitioner. Perusal of the impugned order shows that the excess amount was paid to the petitioner on 01.04.2007 and is paid up till 31.06.2018.
2. The counsel for the petitioner submits that the petitioner is a low paid class-III employee and is working as a Timekeeper under the respondents and that there is no false representation or a fraud played by the petitioner while getting the alleged excess payment so made to the petitioner. He further submits that the said excess payment is impermissible under law for being recovered 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. Thus prayed for setting aside/quashment of the impugned order of recovery.

3. The State counsel, however opposing the petition submits that it is not a case, where the petitioner has already retired from service, rather it is a case where he is in service and therefore, if at all, if the petitioner has been paid excess than what he was otherwise entitled for, the respondents were entitled for recovering the same and therefore the impugned order does not warrant interference.
4. Having heard the contentions put forth on either side and on perusal of the record, the undisputed facts as it stand is that the petitioner is a class-III employee working as a Timekeeper with the respondents. The petitioner has been issued with an order of recovery Annexure P/1 dated 05.11.2018. The recovery order was in respect of certain excess payment made to the petitioner during the period 01.04.2007 to 31.06.2018. It is also not the case of the respondents that the said amount of excess payment has been received by the petitioner by playing fraud or by making any misrepresentation for getting the same.
5. At this juncture, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of "Rafiq Masih" (supra), where certain situations have been mentioned by the Hon'ble Supreme Court and under which situations, the recoveries have been held to be impermissible under law:

"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."

6. If we take into consideration the aforesaid observations/principles of law laid down by the Hon'ble Supreme Court and when we compare those situations with the facts of the present case, it would clearly reflect that the petitioner is a class-III group "C" employee and that there was no misrepresentation or fraud played by the petitioner in getting the said alleged excess payment. Moreover, the excess payment had been first made to the petitioner for a period more than 11 years i.e. w.e.f. 01.04.2007 onwards.

7. Given the facts, this Court is of the opinion that the case of the petitioner squarely falls within the situations cited by the Hon'ble Supreme Court in

the preceding paragraphs and thus the impugned order of recovery in terms of the judgment of the Hon'ble Supreme Court was bad in law as the recovery part was impermissible under law.

8. For the aforesaid reasons, the writ petition deserves to be and is accordingly allowed. The impugned order of recovery stands set-aside/quashed with consequences to follow.

Sd/-
(P. Sam Koshy)
Judge

Ved