

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 7813 of 2018

Chandra Bahadur S/o Late Hom Bahadur Thapa, Aged About 62 Years,
Retired Head Constable, Caf, R/o Shakti Nagar, Durg, District- Durg,
Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Home Department, Mantralaya, Mahanadi Bhawan, New Raipur, District- Raipur, Chhattisgarh.
2. Director General Of Police, Police Head Quarter Raipur, District- Raipur, Chhattisgarh.
3. Inspector General Of Police, Chhattisgarh Armed Force, Head Quarter, Bhilai, Distirct- Durg, Chhattisgarh.
4. Commandant First Battalion, Chhattisgarh Armed Force, Bhilai, District- Durg, Chhattisgarh.
5. Divisional Joint Director Treasury, Accounts And Pension, Office At Durg, Distict- Durg, Chhattisgarh.

---Respondents

For petitioner	:	Shri P.K.Dhurandhar, Advocate.
For State	:	Shri Syed Majid Ali, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/11/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/1 dated 31/01/2018 whereby the respondents have assessed an excess payment paid to the petitioner to the tune of Rs.1,76,262/- and it is stated by the petitioner that the said amount has already been recovered from the retiral dues payable to the petitioner.

2. The challenge to the said order of recovery is on the ground that the said recovery is impermissible under law particularly in the light of the judgment passed by the Hon'ble Supreme Court in the case of **State of Punjab & Ors. etc. v. Rafiq Masih (White Washer) etc.** [2015 AIR SCW 501].

3. The contention of the counsel for the petitioner is that, the petitioner in the instant case has retired from service on 30/04/2018 from the post of Head-Constable. He submits that, he was a class-III employee at the time of his retirement. He further submits that, perusal of the impugned order would reveal that the alleged erroneous fixation of pay was paid to the petitioner about 12 years back i.e. with effect from 01/01/2006 onwards. He further submits that, it is not a case of the respondents that the petitioner has made any mis-representation for the obtaining of the said benefit. He further submits that, the Supreme Court in a very categorical terms in the case of Rafiq Masih (Supra) has held that such recoveries to be impermissible under law.

4. So far as the factual aspects of the case, the State Government does not dispute from the perusal of the record.

5. However, he submits that since it is a case where certain excess amount has been paid to the petitioner for which the petitioner was not otherwise entitled for, the respondent No.3 while releasing the retiral dues have recovered the same and the same cannot be said to be either bad in law or erroneous in any manner.

6. 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.”

7. Considering the facts of the present case it would clearly reveal that the case of the petitioner gets attracted with almost all the situations which had been narrated by the Supreme Court and where the Supreme Court has held such recovery to be impermissible under law.

8. In the given facts, the instant Writ Petition stands allowed.

9. The impugned order of recovery stands set-aside/quashed.

10. The impugned recovery made by the respondents shall be forthwith released back to the petitioner at the earliest preferably within a period of 4 months from the date of receipt of certified copy of this order.

11. It is made clear that the impugned order would only be applicable so far as recovery is concerned. The respondents would be at liberty to carry out the rectification part and shall pay the retiral dues to the petitioner as per the rectified part accordingly.

12. The Writ Petition accordingly stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE