NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WPS. No. 8284 of 2018

Krishna Kumar Chauhan S/o Late Balram Singh Chuhan Aged About 63 Years R/o Moti Nagar, Boriyakhurd, Raipur, District : Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home, Mantralaya, Mahanadi Bhawan, Naya Raipur, District- Raipur, Chhattisgarh.
2. Superintendent of Police Raipur, District- Raipur, Chhattisgarh.

---- Respondents

For Petitioner : Mr. Shikhar Bhaktiyar, Advocate.
For State : Mr. Chandresh Shrivastava, PL.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

13.12.2018

1. The challenge in the present writ petition is to the order dated 13.11.2017 (Annexure P-1), which is an order of recovery, whereby the amount of Rs. 1,41,214/- has been shown to be recoverable from the petitioner.

2. Brief facts of this case is that the petitioner was working as constable in the Department of Police, Raipur, Distt. Chhattisgarh. The petitioner was inflected with an order of compulsory retirement on 30.09.2017. Subsequently, when the retrial dues were being released to the petitioner, he came to know that there has been a recovery of Rs. 1,41,214/- made from the retrial dues payable to the petitioner. Respondents have also deducted the said amount from the retiral dues payable to him. It is this action on the part of the respondents, which is under challenged in the present writ petition.

3. The contention of the petitioner is that the petitioner all alongwith when he was in service was never intimated of any access amount paid to the petitioner neither did the respondents initiate any recovery while he was

in service. It was also the contention of the petitioner that the alleged access amount has been paid not on account of any misrepresentation on the part of the petitioner but was on the fault of the respondents. It was further contented that said access amount was of a period of more than 20 years prior to the petitioner having retired, thus the said action becomes impermissible under law.

4. The State counsel on the contrary submits that it is the case where the petitioner had been inflicted with the order of compulsory retirement. That it is only when the settlement of the dues payable being made by the department they came to know about the excess payment. Immediately when it came to their knowledge they have immediately acted upon, therefore, it cannot be said to be bad in law.

5. Having heard the contentions put forth by either side and perusal of the records, admittedly the petitioner stood retired with effect from 30.09.2017. The excess amount paid to the petitioner by way of erroneous fixation was since 01.01.1996 ie. about 21 years prior to the date of his retirement. It is not the case of the respondents that the said excess payment was on account of any misrepresentation on the part of the petitioner.

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 Ors Versus Rafiq Masih (White Washer) etc.** reported in **(2015) 4 SCC 334** in the said judgment the Hon'ble Supreme Court has very categorical terms narrated the situation where the recoveries have been held to be impermissible under law. If the admitted position of the present writ petition if taken note of, it clearly reflects that all those situations envisaged in the judgment of **State of Punjab & Ors (supra)** squarely is applicable in the case of the petitioner also, given the aforesaid

factual position and the law that has been laid down by the Supreme Court, this court is of the opinion that the action on the part of the respondents in issuance of Annexure P-1 is bad in law and the same deserves to be and is accordingly set aside/quashed. As a consequence the amount which is recovered from the petitioner shall be refunded back to the petitioner forthwith within a period of 60 days from the date of receipt of order of this Court. Let the petitioner bring the order of this Court to the notice of the respondents for necessary early compliance.

Sd /-

(P. Sam Koshy)
Judge

Jamal