

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 324 of 2019

Kerobin Ekka S/o Late Shri Sabastian Ekka Aged About 60 Years R/o Gulmohar C-3, Green Garden Colony, Mungeli, Road, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Divisional Deputy Commissioner, Commercial Tax Bilaspur, Division No. li, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Joint Commissioner State Tax Bilaspur, Division No. li, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- **Respondents**

For petitioner	:	Shri Mateen Siddiqui, Advocate.
For State	:	Shri Jitendra Pali, Dy. AG

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/01/2019

1. The order under challenge in the present writ petition is to the order Annexure (P-1) dated 29/09/2018 whereby the said impugned order the respondents have ordered for recovery of an amount of Rs. 9,44,859 paid to the petitioner as excess amount for the period between 01/07/2006 onwards.
2. Records show that the said amount has also been recovered from the gratuity amount payable to the petitioner. It is that order which is under challenge in the present writ petition. The contention of the petitioner is that firstly the said order of recovery is bad in law for the reason that the Supreme Court has held in the case of ***“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”*** reported in ***2015 AIR SCW 501***, that as such the recovery are impermissible under law. It is further contended by the petitioner that recovery is also bad in law for the reason that it is being made after the petitioner had taken voluntary retirement from service w.e.f. 31/01/2018 onwards. It is also contention

of the petitioner that petitioner has not made any misrepresentation nor has played any fraud for obtaining the alleged excess payment. It was further contention of the petitioner that all along from 2006 till the date the petitioner has retired, respondents have never intimated the petitioner in respect of the alleged excess payment and the order of recovery has also been in violation of the principles of natural justice and thus prayed for its quashment.

3. The State counsel on the contrary submits that it is only when the settlement, if the petitioner had taken retirement was being processed/made that it was detected that certain excess payment was paid to the petitioner on account of wrong fixation given to him from 01/07/2006 onwards and immediately the same was ordered for recovering from the dues payable to the petitioner on his retirement and which cannot be said to be bad in law or illegal. It was further the contention of the State counsel that even otherwise since last excess payment which was paid to the petitioner was till he obtained is retirement. It cannot be said that the order of recovery is a belated one. Thus prayed for rejection of the writ petition.

4. Having heard the contention put forth on either side and from the perusal of the records, admitted factual position is that the petitioner stood retired from service w.e.f 31/01/2018(voluntary retirement). The alleged excess payment for the first time was paid to the petitioner on 01/07/2006 that is almost about 12 years prior to the order of recovery being issued. It is also not the case of the respondents that the petitioner had played any active role or was responsible for the receipt of the said excess payment.

5. 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 others etc. vs. Rafiq Masih (White Washer) etc."*** reported in ***2015 AIR SCW 501***. 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.”

6. Perusal of the aforesaid situations which have been envisaged by the Supreme Court in the case Rafiq Masih(Supra), it clearly would reveal that the case of the petitioner also clearly falls within the aforesaid situations and as such the recovery become impermissible under law.

7. For the aforesaid reasons, the writ petition deserves and is accordingly allowed and the impugned order dated 29/09/2018 stands set aside/quashed. The respondents are directed to immediately refund the deducted amount to the petitioner within a period of three months from the date of receipt of copy of this order.

8. Accordingly, the writ petition stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Rohit