

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2247 of 2016**

Sambhu Nath Mishra S/o Late Dawarika Prasad Mishra, Aged About 63 Years, R/o Raju Yadav Complex Near Pahuna Dukan Kedarpur, Ambikapur P. S. And Tahsil Ambikapur, District Surguja, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue, Mahanadi Bhawan, New Raipur, Distinct Raipur Chhattisgarh
2. The Joint Director, Treasury, Accounts And Pension, Ambikapur District Surguja, Chhattisgarh
3. The Collector Land Record, Surguja (Ambikapur), District Surguja Chhattisgarh

---- Respondents

For Petitioner	:	Shri A. N. Pandey, Advocate
For State	:	Ms. Astha Shukla, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****14.01.2019**

The present writ petition has been filed challenging the order Annexure P-1 dated 30.05.2016 whereby the respondents have ordered for recovery of an amount of Rs.57,617/- from the dues payable to the petitioner.

2. The present is a second round of litigation. A similar notice was earlier issued on 07.10.2015 which was subjected to challenge in WPS No.

4219/2015. This Court vide order dated 18.01.2016 disposed of the said writ petition on the ground that the order dated 07.10.2015 was without affording an opportunity of hearing to the petitioner and reserved the right of the respondents to pass a fresh order. Subsequently, after issuance of a show cause notice and receiving reply to the show cause notice, the impugned order Annexure P-1 has now been passed.

3. Facts of the case are that the petitioner was working as a Revenue Inspector and retired from service w.e.f. 30.06.2013. The first alleged recovery notice was issued on 07.10.2015 and subsequently, now the impugned order dated 30.05.2016 has been issued. Both have been issued much after the petitioner retired from service. Moreover, the amount of recovery is on the ground of certain excess payment made to the petitioner while he was in service. The alleged payment was because of wrong fixation paid to the petitioner from 01.01.1990 to 31.03.2006 while he was in service. This period also is about more than 10 years prior to the first order of recovery dated 07.10.2015 was issued and was also a period prior to 5 years from the date of his retirement. All these situations if taken into consideration would clearly fall within the decision 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** wherein there are certain situations carved out by the Supreme Court under which the recovery has been ordered to be impermissible under law. The relevant situations have been reproduced hereinunder:

“11. Recovery of excess payment, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee

about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

“12. xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx

- (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.”

4. Taking into consideration the aforesaid situations and comparing the same with the facts of the present case what clearly reflects is that the case of the petitioner also falls in all the situations. It is not the case of the respondents that the alleged excess payment was made to the petitioner on account of any misrepresentation or fraud played by the petitioner. The

error that has been crept on the part of the respondents was of the period about 10 years prior to the first order of recovery passed.

5. For all the aforesaid reasons, the impugned order of recovery Annexure P-1 dated 30.05.2016 is not sustainable and the same deserves to be and is accordingly set aside/quashed. The writ petition stands allowed. It is said that the said amount has already been recovered from the retiral dues of the petitioner. As a consequence of the present writ petition being allowed and the impugned order being set aside, the respondents are directed to refund the entire recovered amount to the petitioner forth with preferably within a period of 90 days from today.

**Sd/-
P. Sam Koshy
Judge**