

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 723 of 2019

Shishu Dhar Sharma S/o Late Shri Devdhar Sharma, Aged About 64 Years, Retired B.E.T.O., R/o 185, Har Shringar, Rajkishore Nagar, Near Samudayik Bhawan, Tahsil And District Bilaspur, Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh.
2. The Chief Medical And Health Officer Bilaspur, District Bilaspur Chhattisgarh.
3. Joint Director, Treasury, Account And Pension, Bilaspur Division, District Bilaspur, Chhattisgarh.

---Respondents

For petitioner	:	Shri Vineet Pandey, Advocate.
For State	:	Ms. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/02/2019

1. The challenge in the instant Writ Petition is to the order Annexure-P/1 dated 12/12/2018 whereby the respondents have now passed an order that the petitioner has been paid an excess amount of Rs.1,51,156/- on account of certain alleged erroneous fixation which the petitioner was given when he was in service.
2. It is relevant at this juncture to mention that, on an earlier occasion on 30/05/2016 and 21/06/2016, the respondents had initiated recovery proceedings against the petitioner for an amount of Rs. 5,60,851/- allegedly to have been paid in excess to the petitioner on account of certain erroneous

fixation. The said action of recovery was subjected to challenge before this Court in WPS No. 6955/2018 and this Court while deciding the matter on 23/10/2018 in paragraphs No. 8 to 13 has held as under:-

“8. Given the aforesaid legal position as has been laid down by the Supreme Court in the case of Rafiq Masih (Supra) so also considering the admitted factual matrix of the present case as has also been reflected in the preceding paragraphs, this Court is of the opinion that the impugned order so far as issuance of an order of recovery is bad in law and it is impermissible under law.

9. So far as financial matters are concerned where an excess payment has been made, it has been held by the Supreme Court that the authorities have the power for carrying out rectification part, but they do not have power for recovering an amount which has already been paid to the employee and which the employee has received for no fault of his/her and has also spent the same in due course of time.

10. In the given facts, present Writ Petition deserve to be and is accordingly allowed.

11. The impugned orders so far as the order of recovery is concerned stands set-aside/quashed.

12. This Court makes it clear that so far as correction or rectification is concerned, the respondents have the power to rectify the error which has been detected.

13. However, the petitioner's right is also reserved to question the rectification by making a suitable representation to the authorities concerned.”

3. However, subsequently, the respondents are said to have again re-scrutinized the dues payable to the petitioner and vide the impugned order they reached to the conclusion that, the earlier order of Rs. 5,60,851/- was erroneous and the actual excess payment was of Rs. 1,51,156/-. The impugned order has again been passed asking the petitioner to deposit the said amount. It is this order which is under challenge in the instant Writ Petition.

4. The plain perusal of the order passed by this Court in the earlier round of litigation, this Court in its order dated 23/10/2018 had in a very specific terms held that, the respondents would not be permitted to carry out the recovery of any excess payment made to the petitioner. This Court having passed the order in so very categorical terms held that, there was no occasion for the respondents to have reconsidered or re-scrutinize the dues payable to the petitioner. It appears that the respondents have misunderstood the order passed by this Court. At the cost of repetition it has been reiterated that this Court has held that the recovery proceedings in respect of the petitioner so far as the excess payment made by the respondents to the petitioner erroneously and for which the petitioner was not responsible, cannot be 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** wherein the Supreme Court in a very categorical terms have held that such recoveries are impermissible under law.

5. The only area where this Court had permitted the State Government to carry out was the rectification part if any, so far as the erroneous fixation is concerned. That does not mean that the difference of amount can further still be recovered.

6. In view of the same, this Court is of the opinion that the present Writ Petition deserves to be and is accordingly allowed to the extent as has been held earlier in this Court's order dated 23/10/2018 that the recovery proceedings against the petitioner would not be permitted. The impugned order to that extent stands set-aside/quashed.

7. However, the other portion as has been narrated in the earlier order would still hold good.

8. With the aforesaid observation, the Writ Petition stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit