

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 763 OF 2019**

Govind Ram Mahipal S/o late BR Mahipal, aged about 61 years, Retired Deputy Collector, Nehru Nagar, Tahsil and District Rajnandgaon (CG).

...Petitioner(s)

Versus

1. State of Chhattisgarh through the Secretary, General Administration Department, Mahanadi Bhawan, Mantralaya, New Raipur, Tehsil and District Raipur (CG).
2. Collector, Durg, District Durg (CG).
3. Joint Director, Treasury Accounts and Pension Department, Durg, District Durg (CG).

... Respondent(s)

For Petitioner	:	Shri Basant Dewangan, Advocate.
For Respondents-State	:	Ms. Sunita Jain, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06.02.2019

1. The main grievance of the petitioner raised in this petition arises out of the correspondence made by the office of the respondent No.3 to the respondent No.2 dated 24.10.2018 (Annexure P/4) whereby the respondent No.3 has intimated the respondent No.2 in respect of the erroneous fixation of pay given to the petitioner in the year, 2008 when the petitioner was given grade pay from the post of Naib Tehsildar to the post of Tehsildar w.e.f. 18.02.2008.
2. The petitioner submits that by virtue of the said intimation the department is taking a steps for recovery of an amount of Rs.1,57,306/- towards excess payment which the department is likely to recover from the petitioner's retiral dues. According to the petitioner, he has retired from the post Deputy Collector (Class-II) w.e.f. 30.06.2018. It is the further further contention of the petitioner

that the respondents cannot recover the excess payment made to the petitioner by way of any fault on the part of the department. It is the further contention of the petitioner that there has been no misrepresentation on the part of the petitioner in getting the said pay scale which the petitioner has received during his service period and thus in the light of the judgment of the Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334, the recovery part would be impermissible under the law and prayed for a suitable order in this regard.

3. The State counsel, on the contrary, submits that since the petitioner was recently retired on 30.06.2018 and while the settlement was being made it was found that the petitioner has been erroneously granted wrong fixation while granting grade pay to the petitioner w.e.f. 18.02.2008 from the post of Naib Tehsildar to the post of Tehsildar. According to the State counsel, since the petitioner has been paid something which otherwise he was not entitled, the department has initiated steps for recovery which cannot be said to be bad in law. Further, as of now even the amount of excess payment also has not been quantified, neither is there any order of a fixed amount to be recovered enclosed along with the petition which he could have challenged and the amount so arrived is only on the basis of the averment made in the representation. Thus, prayed for rejection of the writ petition.
4. Be that as it may, since the admitted position as it stands is that the petitioner stood retired from service w.e.f. 30.06.2018. It is not a case of the respondents that the petitioner had made any sort of

misrepresentation for obtaining the said erroneous fixation of pay. It is also not a case of the respondents that the petitioner, in any manner, was responsible for getting the said wrong fixation.

5. Given the said facts and circumstances of the case, it would be relevant at this juncture to refer to the judgment in case of Rafiq Masih (Supra) wherein in a very categorical term the Supreme Court has given certain situations under which recoveries are held to be impermissible under the law, which are as under:

“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.”

6. Perusal of aforesaid situations as enumerated by the Supreme Court would clearly show that the present case of the petitioner also squarely fits in the said situations and as such the recovery part so far as the petitioner is concerned also becomes impermissible under the law. The action for recovery, if any, initiated by the respondents, thus, is held to be bad in law and is set aside/quashed.
7. Quashment of recovery proceedings by itself would not preclude the State Govt. for carrying out rectification of the wrong fixation which has been given. However, it would be relevant to mention that before carrying out any rectification part, the respondents may give an opportunity to the petitioner to explain/justify his claim, if according to him the fixation has been properly given.
8. It has been mentioned by the petitioner at this juncture that because of the said wrong fixation and subsequent development the respondents have till date not released the retiral dues and pension of the petitioner. If that be so, the respondents are directed to ensure that the retiral dues of the petitioner is settled at the earliest preferably within a period of 90 days from the date of receipt of certified copy of this order.
9. With the aforesaid observations, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge