

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 922 OF 2019**

Dhreshwar Prasad Sahu S/o Late Nanki Sab Sahu Aged About 50 Years
Working As Constable (Driver) No. 128, Police Line, Balodabazar, District
Balodabazar- Bhatapara, Chhattisgarh.

...Petitioner(s)

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home Atal Nagar, Mahanadi Bhawan New Raipur, Chhattisgarh.
2. Director General Of Police Police Headquarter Atal Nagar, New Raipur, Chhattisgarh.
3. Superintendent Of Police Balodabazar Bhatapara, District Balodabazar-Bhatapara, Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Somkant Verma, Advocate.
For Respondents-State	:	Ms. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13.02.2019

1. The challenge in this petition is to the order dated 02.01.2018 (Annexure P/1) whereby the respondents have ordered for recovering an amount of Rs.70,382/- paid to the petitioner by way of excess payment.
2. The facts of the case is that, the petitioner is working as a Constable (Driver) under the respondents which is a Class-III category post. It is said that the petitioner has been paid the benefit of Kramonnati (Time Bound Pay Scale) w.e.f. 01.02.2012 to 12.07.2017 erroneously and now after a period of about 7 years from the date of alleged erroneous payment being made, the respondents have now issued the impugned order seeking recovery of excess payment so made.
3. The contention of the petitioner is that, the petitioner has not made any misrepresentation so far as grant of Kramonnati is concerned. It

is also the contention of the petitioner that it is not a case that the petitioner has been held responsible for receiving the same. Moreover, from the impugned order it appears that it is not just the petitioner alone against whom such orders have been passed. The impugned order Annexure P/1 reflects the names of 45 similarly placed person against whom similar orders have been passed. Lastly it is contended that the said action of recovery by the respondents is impermissible under the law in the light of the judgment of the Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4) SCC 334.

4. The State counsel, on the contrary, opposing the petition submits that it is a case where the petitioner is still in service and that when the respondents have detected excess payment made to the petitioner, they have taken steps for rectifying the mistakes and also to recover the loss caused and thus the action of the respondents cannot be said to be bad in law or contrary in any manner.
5. Given the aforesaid facts and circumstances of the case, what has to be primarily looked into is that, the petitioner is presently working as a Constable (Driver) under the respondents which is a Class-III category post. It is not a case of the respondents that the petitioner had made any sort of misrepresentation for obtaining the said erroneous excess payment. 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 initiated by the respondents, thus, is held to be bad in law and is set aside/quashed.

7. The recovery made by the respondents shall be forthwith refunded back to the petitioner within a period of 90 days from the date of receipt of certified copy of this order.
8. Accordingly, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder