

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 1068 of 2019**

Sher Singh Kankarwal S/o Shri Gyaniram Kankarwal Aged About 64 Years R/o Village Baradwar, Police Station Baradwar, Tahsil Sakti, Civil And Revenue District Janjgir Champa, Chhattisgarh. At Present R/o Talapara Road Dr. Madhu Mishra Gali, Vinoba Nagar, Bilaspur, Police Station- Tarbahar, Tahsil Bilaspur, Civil And Revenue District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Mineral Development Corporation Limited, Sonakhan Bhavan, Ring Road No. 1, Village Puraina, Post Office Ravigram, Raipur, Civil and Revenue District Raipur, Chhattisgarh.
2. Special Authorized Officer Chhattisgarh Mineral Development Corporation Ltd. Raipur Civil And Revenue District Raipur, Chhattisgarh.
3. The Director / Additional Director (Account And Pension) Directorate, Department Of Minerals, Indravati Bhawan, New Raipur, Chhattisgarh.
4. The Area Officer Chhattisgarh Mineral Development Corporation Ltd. Area Office- Ambikapur, Sarguja, Civil Revenue District Sarguja, Chhattisgarh.
5. The Mines Manager Mainpat Ambikapur, Sarguja, Civil and Revenue District Sarguja, Chhattisgarh.

----Respondents

For Petitioner	:	Shri PM Shrivastava, Advocate
For State	:	Shri P. Acharya, Panel Lawyer
For Respondents 2,4 and 5	:	Shri Animesh Tiwari, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/02/2019**

1. The challenge in the present writ petition is to the order (Annexure P/1) dated 28.12.2018 whereby the respondents have assessed an amount of Rs.1,18,410/- as excess payment to the petitioner between the period 01.11.2001 to 31.12.2015 and have ordered for recovery of the same. It also reveals that out of the said amount of Rs.1,18,410/-, the department has already recovered an amount of Rs.66,690/-from the arrears of the pay that the petitioner has received on the implementation of 7th Pay Commission and for the balance amount of Rs.51,720/-the petitioner has been asked to

deposit the same before the department. It is this order which is under challenge.

2. According to counsel for the petitioner, the said order of recovery is per se illegal as the Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334, in very categorical terms has held that such recoveries are impermissible under the law. He further submits that it is a case where the petitioner is not in any manner responsible for any erroneous payment that he has received at all. Moreover, the petitioner has not been taken into confidence before the impugned order of recovery has been passed, inasmuch as, no opportunity of hearing was granted before passing of the impugned order and as such the same is also in violation of principles of natural justice.
3. The counsel appearing for the respondent-State as well as for the respondents No.2,4 and 5 opposing the petition submits that it is a case where the respondents, in the course of scrutinizing the service records of the petitioner, found that he has been erroneously granted certain wrong fixation of pay on account of which certain excess payment has been paid to the petitioner which he is not otherwise legally entitled for. The moment the respondents detected an error and found that the petitioner in all has been paid excess amount of Rs.1,18,410/-, they had taken steps for recovering the same. It is a case where the petitioner has got something extra which otherwise he is not entitled for under the rules, and therefore, the same becomes recoverable and for which the respondents rely

upon the judgment of Supreme Court in case of High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh, 2016(14) SCC 267.

4. Having heard the rival contentions put forth on either side and on perusal of records, what clearly reflects is that, the petitioner was working as a Blaster under the respondents No.2,4 and 5. He stood retired from service on 30.04.2017. After his retirement, he was paid all his retiral dues. Subsequently, on the implementation of 7th Pay Commission, the petitioner was payable of certain arrears and while quantifying the same, the respondents seem to have detected that the petitioner infact has been erroneously granted certain wrong fixation and the petitioner as such was paid some excess payment while in serviced which the respondents have taken steps for recovering and in the process the respondents have also recovered the arrears of pay which the petitioner was to receive on the implementation of 7th Pay Commission.
5. At this juncture, it would be relevant to refer to the judgment in case of Rafiq Masih (Supra). The Supreme Court in the said judgment in a very categorical terms had laid down certain situations under which it has been held that the recovery would be impermissible under the law. The situations so envisaged in the said judgment is for ready reference reproduced herein 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 as notice of recovery firstly has been issued much after his retirement. The alleged excess payment was ordered to be recovered for the first time way back around 17-18 years from the date the excess payment was made. It is not in dispute that the petitioner was not responsible in any manner in getting that excess payment in as much as there is no allegation of any misrepresentation or fraud played by the petitioner in getting the said erroneous fixation.
7. Given the aforesaid facts and circumstances of the case, this court has no hesitation in reaching to the conclusion that the recovery proceedings initiated by the respondents is bad in law and accordingly the same stands set aside/quashed. The amount which has been recovered by the respondents shall be refunded back to the petitioner forthwith within a period of 60 days from the date of receipt of certified copy of this order.
8. So far as judgment relied upon by the respondents is concerned, this court is of the clear view that the said judgment has been passed in

an entirely different factual background and the facts of present case is rather one which stands squarely covered by the judgment in case of Rafiq Masih (Supra).

9. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder