

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1553 of 2019**

Dr. Manik Chatterjee S/o Late Shri C. L. Chatterjee Aged About 66 Years
Presently Retired As Professor Anatomy Pt. J.L.N. Medical Collage, Raipur
Chhattisgarh., Presently Working On Contract As Professor Anatomy Medical
Collage, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Medical Education Department
Mahanadi Bhawan Mantralaya, Naya Raipur, District - Raipur Chhattisgarh.,
District : Raipur, Chhattisgarh
2. Dean Pt. Jnm Medical Collage, Jail Road Raipur, District - Raipur
Chhattisgarh., District : Raipur, Chhattisgarh
3. Joint Director Treasury, Accounts And Pension Raipur, District - Raipur
Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner : Mr. N. K. Vyas, Advocate.

For State : Mr. Sameer Behar, PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/03/2019**

1. The challenge in the present writ petition is to the order (Annexure P-1)
dated 24/05/2018 whereby the respondents have initiated recovery
proceedings against the petitioner for an amount of Rs. 6,30,762/-. The
said recovery was on account of certain excess payment that were paid
to the petitioner during the period 01/07/2007 to 31/12/2015.
2. The contention of the petitioner is that in the instant case the petiitoner
was working as Professor under the respondents and stood retired from
service on 31/12/2017. The impugned order has been passed after
about 5 months from the date of retirement. The recovery is in respect
of erroneous fixation given to the petitioner during the period July, 2007
to December, 2015. The contention of the petitioner is that the petitioner

is not in any manner responsible for the alleged benefit of wrong fixation that he has received. The contention of the petitioner also is that the petitioner for receiving the same has not made any misrepresentation to the department and that the alleged erroneous fixation if at all paid to the petitioner was on account of fault on the part of the officers of the respondents and thus prayed for the quashment of the same.

3. State counsel on the contrary defending the action of the respondents submits that it is a case where the petitioner has been paid something which otherwise he is not legally entitled for under the service rules. According to the State counsel once when the department has detected the error so far as the erroneous payment is concerned, respondents have every right to recover the same from the petitioner and thus prayed for rejection of the writ petition.
4. Having heard the contentions put forth on either side and perusal of the record, undoubtedly the petitioner retired from service from the post of Professor under the respondents w.e.f. 31/12/2017. The petitioner seems to have been given certain erroneous fixation of pay during the period 01/07/2007 to 31/12/2015. It is not the case of the respondents that the erroneous payment made was on account of any misrepresentation or fraud played by the petitioner.
5. Given the aforesaid undisputed facts if we look into the nature of dispute it clearly reflects first of all the petitioner has been retired on 31/12/2017 from the post of Professor. The alleged erroneous fixation for the first time was paid about more than 10 years prior to his retirement. The order of recovery issued is much after the petitioner having retired.

6. At this juncture it would be relevant to refer to the judgment of the ***“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”*** reported in ***2015 AIR SCW 501***. In the said judgment Supreme Court categorically held that the recoveries under such circumstances would be impermissible under law.

7. Situations as envisaged by the Supreme Court in the case of Rafiq Masih(Supra) are reproduced herein under :-

“(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.”

8. Plain reading of the circumstances enumerated in the preceding paragraphs would clearly reveal that the case of the petitioner also squarely fits in to the situations envisaged by the Supreme Court in its judgment in the case of Rafiq Masih(Supra).

9. In view of the same, this Court has no hesitation in reaching to a conclusion that the impugned order Annexure (P-1) dated 24/05/2018 and the action for initiating recovery proceedings by the respondents is totally impermissible under law, in the light of the judgment of the Supreme Court aforementioned and same deserves to be and is accordingly set aside/quashed.
10. Needless to mention that since order of recovery has been quashed, this Court does not find any good reason for not releasing the retiral dues payable to the petitioner including that of pension.
11. Accordingly, the writ petition stands disposed off.

Sd/-

(P. Sam Koshy)
Judge

Rohit