

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2190 of 2019**

D. K. Tripathi S/o Shri Late S. C. Tripathi, Aged About 62 Years, R/o
Nagri, Police Station Nagri, District – Dhamtari, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Principal Secretary, Health And Family Welfare Department, Mahanadi Bhawan, New Raipur Chhattisgarh
2. The Chief Medical And Health Officer, District - Dhamtari Chhattisgarh

---- Respondents

For Petitioner	:	Shri Abhishek Pandey, Advocate
For State	:	Ms. Sunita Jain, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****28.03.2019**

1. With the consent of the parties, the matter was heard finally at the motion stage.
2. The challenge in the present writ petition is to the order of recovery dated 29.12.2018 whereby the respondent no.2 has ordered for recovery of an amount of Rs.70,700/- from the dues payable to the petitioner. The order of recovery is on the ground that the petitioner was paid certain wrong fixation in the year 2007 which continued up till 2018.
3. The facts of the case are that the petitioner working on the post of

Non-Medical Supervisor, Community Health Centre Nagri, District Dhamtari stood retired from service on 31.01.2019 and barely one month before his retirement, the impugned order of recovery has been passed. The challenge to the order of recovery is on the ground that the petitioner firstly is a Class-III employee and the order of recovery been made just before his retirement. Further ground is that the petitioner has not made any sort of misrepresentation for obtaining the same. Further contention of the counsel for the petitioner is that the erroneous fixation of pay was granted to the petitioner around 11 years prior to the order of recovery being issued and all these facts make the recovery part impermissible.

4. State counsel, on the other hand, opposing the petition submits that it is a case where the erroneous fixation was detected at the time of settlement being made on his retirement and immediately the department has taken steps for recovering the excess amount paid to the petitioner. State counsel submits that the Govt has always the power of rectifying the error that has been caused and therefore the impugned order cannot be said to be bad in law.

5. Having heard the contentions put forth on either side and on perusal of the record, it would be relevant at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Others etc. Vs. Rafiq Masih(White Washer) etc., reported in 2015 AIR SCW 501**. In the said judgment, the Supreme Court has envisaged certain situations under which it has been categorical held that the recovery under those circumstances is impermissible under law. Some of the situations envisaged in the said judgment are as 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.”

6. A perusal of the admitted factual matrix of the instant case would show that the petitioner's case squarely falls in almost all the situations given in the said judgment of the Supreme Court like; the impugned order was passed one month before retirement of the petitioner, the erroneous fixation was made to the petitioner more than a decade ago and the petitioner was a Class-III employee. All these factors are reflected in the judgment of the Supreme Court in the case of Rafiq Masih (supra) wherein it has been held that recovery under these situations would be impermissible.

7. Thus, this Court has no hesitation in holding that the impugned order of recovery to that extent is bad in law and the same deserves to be and is

accordingly set aside.

8. However, it is ordered that it is only the recovery part which is impermissible but the State has got all the power for carrying out the rectification part so far as the erroneous fixation that has been given to the petitioner is concerned.

9. The writ petition accordingly stands allowed.

**Sd/-
P. Sam Koshy
Judge**

Khatai