

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2194 of 2019**

Yadunath Singh S/o Late Shri Indrabahadur Singh Aged About 63 Years R/o
Gouri Ganesh Colony, Mangla, Shyama Sadan, Bilaspur, Police Station Civil
Line, Tahsil And District Bilaspur Chhattisgarh, District : Bilaspur,
Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Home/police,
Mahanandi Bhawan, Mantralaya, Police Station And Post Rakhi, Atal Nagar,
Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Inspector General Of Police (Igp) Office Of The Inspector General Of Police
Near Nehru Chowk, Bilaspur District Bilaspur Chhattisgarh, District :
Bilaspur, Chhattisgarh
3. Superintendent Of Police (Sp) Office Of The Superintendent Of Police (Sp),
Janjgir Champa, District Janjgir Champa Chhattisgarh, District : Janjgir-
Champa, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Abhishek Pandey With Santosh Kumar Pandey, Advocates
For State	:	Mr. Jitendra Pali, Dy. AG

Hon'ble Shri Justice P. Sam Koshy
Order on Board

28/03/2019

1. The challenge in the present writ petition is to the order of recovery dated 26.02.2018 passed by the respondents. The recovery is made to the amount of Rs. 95,286/-. The facts of the case is that the petitioner was working under the respondents as Constable. He stood retired from service w.e.f. 30/06/2018. Subsequent to his retirement an amount of Rs. 95,286/- has been recovered from the retiral dues payable to the petitioner.

2. According to the petitioner though there was an order of recovery dated 26/02/2018 issued against the petitioner, the same was not served upon the petitioner neither was the said amount recovered from the salary payable to the petitioner while he was in service but the same was paid to after he was retired and the amount has been recovered from the dues payable to the petitioner. The said recovery has been made on account of certain excess payment made to the petitioner by way of erroneous fixation of pay. Erroneous fixation of pay was given to the petitioner w.e.f. 01/01/1996 uptill 01/07/2012.
3. The counsel for the petitioner submits that the impugned order of recovery and the amount of Rs. 95,286/- by the department is bad in law for the reason that firstly the same has been recovered when the petitioner has retired from service. It is further contention of the petitioner that he has not made any misrepresentation or played fraud for obtaining the said erroneous payment. It is further ground of the petitioner that the said amount has been paid to the petitioner erroneously more than 20 years prior to his retirement from service. For all those reasons, the recovery becomes impermissible under law.
4. Counsel for the petitioner relied upon the judgment of the Supreme Court in the case of ***“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”*** reported in ***2015 AIR SCW 501*** prays for quashment of the impugned order.
5. The State counsel on the contrary opposing the petition submits that it is a case where petitioner has been paid certain erroneous fixation and which could be detected only while the settlement of his dues were being prepared and immediately on the detection of the error,

department has initiated steps for rectification of the error and the for recovering of the excess amount paid to the petitioner. The contention of the State counsel is that once when it is found that petitioner has been paid something in excess to what he was otherwise illegally entitled for, the department has all the rights and powers for recovering the said illegal payment received by the petitioner.

6. Having heard the contentions put forth on either side and on perusal of the record what is necessary to be appreciated is that the issue so far recovery to be made from a Government employee is concerned came up for consideration before the Supreme Court in the case of **Rafiq Masih(supra)**.

7. In the said judgment the Hon'ble Supreme Court stipulated certain situations under which the recoveries have been ordered to be impermissible under law. Some of the situations as envisaged in the said judgment are reproduced hereinunder :

“(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 facts of the present case and comparing the situations as envisaged by the Supreme Court it would reveal that the case of the petitioner squarely falls within the situations envisaged in the case of **Rafiq Masih(supra)** decided by the Hon'ble Supreme Court. The petitioner firstly is a retired employee. He retired from a class-III post. The petitioner was not responsible in any manner for the erroneous fixation of pay received by him. The alleged erroneous payment for the first time was paid to the petitioner about 22 years prior to the date of recovery. All these facts would clearly show that the case of the petitioner also squarely is covered by the judgment of the Supreme Court in the case of **Rafiq Masih (Supra)**. The impugned order of recovery accordingly is illegal and impermissible under law and same therefore deserves to be and is accordingly set aside/quashed. Respondents are forthwith directed to ensure that the recovery of the amount made of 95,286 from the dues payable to the petitioner should have immediately refunded back to the petitioner at the earliest preferably within a period of 60 days from the date of receipt of copy of this order.

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

Sd/-
(P. Sam Koshy)
Judge

Rohit