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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 2615 of 2019

J. P. Agnihotri S/o Late Shri Bhuneshwar Agnihotri, Aged About 64 Years R/o C/o Ashish Agnihotri, Dental Surgeon, Shivaji Nagar, Titurdih, Durg Chhattisgarh.

---- Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary, Forest Department Mahanadi Bhawan Mantralaya, New Raipur, District Raipur Chhattisgarh.
2. District Forest Officer, Forest Division, Kastaghar Complex, Dalli Road, Balod, District Balod Chhattisgarh.
3. Divisional Joint Director, Treasury, Account And Pension, Durg Division, Durg Chhattisgarh.

---Respondents

For Petitioner	:	Shri TK Tiwari, Advocate.
For State	:	Shri Jitendra Pali,Dy. Advocate General

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

09/04/2019

1. Challenge in this writ petition is to the order dated 13.07.2018 whereby the respondents have ordered for recovery of an amount of Rs. 1,03,155/-from the retiral due payable to the petitioner.
2. The facts of the case is that, the petitioner stood retired from the post of Forest Ranger w.e.f. 28.02.2018. According to the petitioner, though he has been retired from service in February, 2018 and more than one year has lapsed, till date he has not received any gratuity amount as also his pension. The petitioner has been subsequently intimated of the issuance of the impugned order whereby it has been intimated that there was some alleged excess payment made to the petitioner on account of some erroneous fixation of pay that crept in w.e.f. 01.07.2007 onwards and in the process excess amount of Rs.1,03,155/- has been paid to the petitioner which has to be

recovered and which the department has ordered to be recovered from the gratuity amount payable to him.

3. The grievance of the petitioner is that, firstly the order of recovery is bad in law and secondly even though there is an order for recovery, the department has till date not released the balance of gratuity amount which the petitioner was otherwise entitled for. Further contention of the petitioner is that the order of recovery is bad in law for the reason that the petitioner firstly is not in any manner responsible for alleged excess payment received by him, if any. The alleged excess payment has been paid to him wayback on 01.07.2007 i.e. about 11 years prior to the date of retirement and also 11 years prior to the date of issuance of the order of recovery. Further the contention of petitioner is that he is a Class-III employee and for all these reasons the recovery becomes impermissible under law in the light of decision of the Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334.

4. The State counsel on the contrary justifying the action on the part of the respondents submits that it is a case where in the course of settlement of retiral dues payable to the petitioner it was detected that the petitioner was granted erroneous fixation w.e.f. 01.07.2007 and in the course excess payment of Rs.1,03,155/- was paid to him which the petitioner was otherwise not legally entitled for. Thus, the State was justified in recovering the same after carrying out rectification part the moment it was detected.

5. Having heard the contentions on either side and on perusal of records, it needs no deliberation on the issue whether the department could initiate recovery against an employee after retirement in respect of any alleged excess payment made while he was in service. The Supreme Court time and again has repeatedly held that any excess payment paid to an employee for no fault of his and if the employee bonafidely has consumed the same, the department has only the right for rectification of the error, but no recovery can be made. Moreover, the Supreme Court in case of Rafiq Masih (Supra) has in categorical terms given certain situations under which recovery from an employee has been declared to be impermissible under the law. Some of the situations mentioned in the said judgment 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. If we consider the facts of the present case with the situations narrated by the Supreme Court in the preceding paragraph, it would reveal that, admittedly the petitioner is Class-III category employee. The record show that the petitioner stood retired prior to issuance of notice of recovery. The excess payment was made about 11 years prior to the date of retirement. The undisputed fact also is that the said excess payment has not been made on account of any misrepresentation or any act on the part of the petitioner, but the same has occurred only on account of the mistake committed by the respondents. The error whatsoever was at the hands of the office of the respondents.

7. Given the aforesaid factual matrix of the case, this court has no hesitation in holding that the order of recovery issued against the petitioner is one which is impermissible under law as per the judgment of the Supreme Court in the case of Rafiq Masih (Supra) and as such the said impugned recovery notice is unsustainable. Accordingly, the impugned order dated 13.07.2018 deserves to be and is hereby set aside/quashed.

8. The order of recovery getting quashed, the respondents are directed to forthwith release the gratuity amount payable to the petitioner as also the pension if there is no other impediment operating against the petitioner.

9. The petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder