

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2593 of 2019**

Ku.Rukhsana Hussain D/o Syed Fazal Hussain Aged About 63 Years
Retired From The Post Of Assistant Grade-Ii, National Highway Division ,
Public Works Department, Bilaspur, District Bilaspur Chhattisgarh., District :
Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Atal Nagar Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Engineer In Chief Public Works Department, Nirman Bhawan, North Block, Sector-19, Atal Nagar Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Chief Engineer Public Works Department, National Highway, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Superintendent Engineer Public Works Department, National Highway Division, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
5. Joint Director Account, Treasury And Pension, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. CJK Rao, Advocate
For State	:	Mr. Ishan Verma, PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****08/04/2019**

1. The challenge in the present writ petition is to the action on the part of the respondents whereby an amount of Rs. 1,09,096/- has been recovered from the leave encashment payable to the petitioner on account of certain alleged excess payment made to the petitioner.

2. Fact of the case is that the petitioner was working under the respondents as an Assistant Grade-II and has retired from service w.e.f. 31/05/2018. After the petitioner had retired from service, the respondents have released the entire retiral dues payable to the petitioner. However, from the leave encashment payable an amount of Rs. 1,09,060/- has been recovered and only the balance amount was released. Petitioner was given Annexure (P-1) table of chart which according to the department was the calculation of the excess payment made to the petitioner on account of erroneous benefit of increment given to the petitioner w.e.f. 25/02/2010 onwards till her retirement on 31/05/2018.
3. Contention of the petitioner is that the petitioner is not in any manner responsible for the alleged excess payment that she had received. Moreover, the petitioner is a Class-III low paid employee. Likewise, the recovery also have been initiated after the petitioner has retired from service. It was also the contention of the petitioner that the alleged excess payment to the petitioner was made more than five years prior to the action of recovery made by the department and thus in the light of 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*** action of recovery is bad in law.
4. State counsel however opposing the petition submits that petitioner has been paid something which she was not otherwise entitled for. That the excess payment was detected at the time of the final settlement was being made to the petitioner on her retirement. Therefore, the department cannot be said to be at fault for initiating recovery proceedings. The state counsel further submits that the

petitioner has also given an undertaking in this regard i.e. Annexure (P-4). Thus, prayed for rejection of the writ petition.

5. Given the said facts and circumstances of the case, particularly, taking note of the admitted factual matrix as it stands so far as
 - (i) the petitioner being a retired employee retired w.e.f. 31/05/2018.
 - (ii) The petitioner being a low paid Class-III employee.
 - (iii) An alleged excess payment for the first time was paid more than five years prior to the retirement of the petitioner.
 - (iv) The petitioner is not at fault for alleged excess payment which was received by the petitioner.
6. In view of the same the impugned action of recovery is held to be bad in law, arbitrary and unjustified and also impermissible under law and same therefore is set aside/quashed. The respondents as a consequence are directed to ensure that the amount of recovery of Rs. 1,09,096/- made from the petitioner's leave encashment should be refunded back to the petitioner forth with within a period of four months from the date of receipt of copy of this order. So far as the undertaking given by the petitioner is concerned, the same may not be of any assistance of the respondents for the reason once when the Supreme Court in very categorical term has held that these recoveries are impermissible under law the undertaking taken from the employee at the time of retirement, who at that point of time is in dire need of retiral benefits, would not come to the rescue of the State authorities to initiate the recovery proceedings which otherwise is impermissible under law.
7. The writ petition stands allowed and accordingly disposed off.

Sd/-
(P. Sam Koshy)
Judge