

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2778 of 2019**

1. S. S. Thakur S/o Late Shri Pancham Singh Thakur Aged About 63 Years Occupation Sub Inspector (M) (Retired) Under The Superintendent Of Police, (Pts) Mana, Raipur R/o Ward No. 11 Anand Nagar, P.S. Mana Camp, District - Raipur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Home Police Affairs And Finance Department, Mahanadi Bhawan, New Mantralaya, Raipur Chhattisgarh
2. The Director General Of Police Police Head Quarter, Raipur District Raipur Chhattisgarh
3. The Superintendent Of Police Training School, (Pts) Mana, Raipur District Raipur Chhattisgarh
4. The Joint Director Treasury, Account And Pension, Raipur District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Prakash Tiwari, Advocate
For State	:	Ms Shriya Mishra, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11/04/2019**

1. The challenge in the present writ petition is to the Annexure P-1 dated 25.03.2019 whereby the respondents have passed an Order holding that the petitioner has been erroneously granted the first as well as the second time scale pay which otherwise, he was not entitled for and it has been ordered for recovering the excess amount that has been paid to the petitioner.

2. The fact of the case is that the petitioner was working as Sub-Inspector (M) under the respondents vide Order dated 10.12.2013 Annexure P-3. The petitioner was granted the benefit of the first as well as the second time scale pay w.e.f., 01.04.2006 and 28.07.2008 respectively. The petitioner in due course of time superannuated and retired from service on 30.06.2018.
3. The contention of the learned counsel for the petitioner is that he had retired from service on 30.06.2018 though more than 8 months have been lapsed, though he did not get a single penny on his retirement that he is entitled for. Meanwhile, the respondent have now issued an impugned Order dated 25.03.2019 whereby it has been held that the petitioner was wrongly granted the benefit of the first as well as second time scale pay w.e.f., 01.04.2006 to 28.07.2008 onwards and thus have ordered for the recovery of the same from the retiral dues that was payable to the petitioner. It is this order which is under challenge in the present writ petition.
4. The contention of the petitioner is that the said impugned order is per se illegal for the reason that the Supreme Court very categorically held that such recovery is impermissible in law.
5. The contention of the petitioner is that the petitioner is otherwise a Class-III low paid employee and the recovery in fact, has been ordered much after his retirement. It is further contented by the petitioner that there is no misrepresentation or fraud played by the petitioner for getting the said erroneous excess payment. Further, the contention that the alleged payment paid to the petitioner was on account of fault on the part of the department and not in any manner of the petitioner. Thus prayed for the quashment of the same.

6. The State Counsel on the other hand, justified the impugned order by submitting that at the time of retirement and while final settlement was being made, it was detected that the petitioner was given certain erroneous fixation of pay which he was otherwise not entitled for and the department immediately took step for rectifying the errors and have ordered for recovery of excess amount that has already been paid to the petitioner and thus, the action cannot be said to be either bad in law or contrary to the service condition.
7. Having heard the contentions put forth on either side and perusal of the record as admitted what we find above from the pleading that has come on record is that the petitioner was an employee working as Sub-Inspector (under the respondents). The said post is class-III post. The petitioner stood retired from service w.e.f. 30.04.2018. The alleged erroneous fixation of pay was paid to the petitioner for the first time in the year 2013, thus the recovery has been ordered to be made about 5 years prior to the order of recovery. It is also reflected that there is no allegation of the petitioner having made false representation for obtaining the said benefit.
8. Given the aforesaid factual matrix of the case, it is relevant at this juncture referring to 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*** In the said judgment, the Supreme Court has given the certain situation under which it has been held that recovery becomes impermissible under law. The situation so envisaged in the said judgment is 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."

9. Given the aforesaid situations as envisaged in the judgment of the Supreme Court in the **State of Punjab and Others etc. vs. Rafiq Masih (White Washer) etc.** It clearly reflects that the petitioner's case squarely falls within the ambit of the judgment of the Supreme Court. In view of the same, the impugned order in the present writ petition also being impermissible under law and deserves to be and is accordingly set aside/ quashed. Since the petitioner has not been released any of the retiral dues and this Court has set aside/quashed the action of recovery initiated by the respondents, the respondents are directed to ensure that the entire retiral dues which is payable to the petitioner is released to the petitioner at the earliest preferably within of period of 4 months from the date of receipt of copy of this Order.

Sd/
(P. Sam Koshy)
Judge