

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2913 of 2019**

Hanuman Prasad Mishra S/o Late Shri R.S. Mishra, Aged About 63 Years
Retired Assistant Sub Inspector, R/o Ashok Vihar, Phase II, Sarkanda
District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Home Police Affairs And Finance Department, Mahanadi Bhawan, New Mantralaya, Atal Nagar, District - Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Director General Of Police, Police Heal Quarter, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. The Superintendent Of Police, Bilaspur District - Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
4. The Joint Director, Treasury, Account And Pension, Bilaspur District - Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Prakash Tiwari, Advocate
For State	:	Mr. Somkant Verma PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****09/08/2019**

1. The challenge in the present writ petition is to the order of recovery initiated by the respondents against the petitioner.
2. The facts of the case is that, the petitioner was working as a Assistant Sub Inspector of Police retired from service w.e.f. 31.08.2018/ That after the retirement in the course of processing the retiral dues the respondents have issued the impugned order Annexure P-2 & Annexure P-1 respectively dated 05.12.2018 & 09.01.2019. The excess amount allegedly paid to the petitioner is to the tune of Rs. 1,31,236/-. The alleged excess amount is said to have been paid on account of erroneous fixation of pay made between the period 01.01.2006 to 31.08.2018 i.e. till the date of retirement.

3. According to the counsel for the petitioner, petitioner is a Class-III employee and recovery as such could not have been made by the respondents. Moreover, the contention of the petitioner is that the recovery is being made after a period of about 12 years from the date the error was first committed by the respondents. Thus, recovery becomes impermissible under law. It is further contention of the petitioner that he is not in any manner responsible for the alleged erroneous fixation paid to the petitioner, if not received by the petitioner.
4. State counsel on the contrary opposing the petition submits that it is only after retirement of the petitioner when his settlement was being processed it was detected that there was certain erroneous payment made which the authorities now initiated recovery from the dues payable to the petitioner. According to the State counsel once when it has been detected that petitioner has been paid something which he was otherwise not entitled for. State has every right to recover the said amount. Therefore, the judgment of the Supreme Court in the case of **State of Punjab Vs. Rafiq Masih, 2015 (4) SCC 334** may not be attracted in the facts of the present case.
5. Having heard the contentions on either side and on perusal of the records it would be relevant to take note of the situations which have been reflected by the Supreme Court in the case of Rafiq Masih(Supra) where the Supreme Court has categorically held that recoveries under such situations are impermissible. The situations was envisaged in the judgment of Rafia Masih(supra) 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."

6. The undisputed factual matrix of the case is that the petitioner is a Class-III grade employee. The petitioner also has not been held to be responsible in any manner for obtaining the said erroneous fixation of pay. Fixation of pay also has been made 12 years prior to order of recovery being issued. Before initiating the recovery, no opportunity of hearing was given to the petitioner.

7. Given the aforesaid undisputed facts of the case, this Court has no hesitation in reaching to the conclusion that the case of the petitioner calls in almost all the situations under which the Supreme Court has held recoveries to be impermissible. The impugned order, action and order of recovery initiated by the respondents vide Annexure P-1 & P-2 stands set aside/quashed. The amount which has already been recovered should be refunded back to the petitioner. It is made clear that this Court as interfering with the impugned order quashed to the extent of recoveries being made the action of rectification of the erroneous fixation of pay is not being interfered with.

8. Accordingly, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge