

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3304 of 2019**

Smt. Sova Rani Kundu W/o Arun Kundu Aged About 58 Years R/o D-6 Pension Bada, Raipur, Chhattisgarh.

---- **Petitioner**

Versus

1. State of Chhattisgarh Through The Secretary, Department of Health and Family Welfare, Mantralaya, Mahanadi Bhavan, Atal Nagar, Raipur, Chhattisgarh.
2. Principal Secretary Department Of Finance Mahanadi Bhavan, Atal Nagar, Raipur, Chhattisgarh.
3. Office Joint Director And Superintendent Dr. Bhim Rao Ambedkar Memorial Hospital Raipur, Chhattisgarh.
4. The Joint Director Treasury Accounts And Pension, Raipur, Chhattisgarh.
5. Drawing and Disbursement Officer Local Office, Raipur, Chhattisgarh.

---- **Respondents**

For Petitioner	:	Shri Akash Kunde, Advocate.
For State	:	Shri Sameer Behar, Panel Lawyer.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

03/05/2019

1. The challenge in the present writ petition is to the order dated 14.01.2019 whereby the respondents have issued an order of recovery from the petitioner on account of certain alleged excess payment because of erroneous fixation of pay made to the petitioner.
2. The alleged erroneous fixation of pay was made to the petitioner as early as on 13.01.1986 and was paid till 01.07.2016.
3. The contention of the petitioner is that the impugned order is bad in law for the reason that the same is impermissible as per decision of the Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015

(4)SCC 334. It is the further contention of the petitioner that the said alleged recovery notice has been made to the petitioner after about 23 years from the date the wrong fixation was first made to the petitioner. It is not a case of the respondents that the petitioner was responsible for getting the said erroneous fixation of pay done. Thus, for all these reasons the impugned notice of recovery is liable to be set aside.

4. The State counsel opposes the petition and submits that it is a case where the petitioner is still in service and when the respondents have now detected the error in the fixation of pay of the petitioner, they have taken steps for rectification of the error and for recovering the excess payment made. Since the petitioner is already in service, the judgment of Supreme Court in case of Rafiq Masih (Supra) would not be applicable.
5. Having heard the contentions put forth on either side, the admitted factual position as it stands is that, the petitioner undisputedly is working as Nursing Sister which is a Class-III post. The erroneous fixation of pay was first made to the petitioner about 23 years prior to the issuance of impugned notice dated 14.01.2019. The respondents have not taken a stand that the said erroneous pay fixation was made to the petitioner on account of any misrepresentation made by the petitioner or by way of fraud played by her.
6. The Supreme Court in 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.”

7. 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 the case of the petitioner squarely falls within most of the situations which are envisaged by the Supreme Court holding recovery to be impermissible under the law.
8. 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 14.01.2019 deserves to be and is hereby set aside.

9. It is made clear that quashment of the order would only have the effect of respondents being restrained from carrying out recovery proceedings. However, so far as correction of erroneous fixation of pay is concerned, the State has got power for carrying out the rectification part. It is also made clear that any deduction made till now would be refunded back to the petitioner without any further delay.

10. The petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder