

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4227 of 2019**

H. S. Yadav S/o Shri Late Radharam Yadav, Aged About 61 Years,
(Retired Male Nurse Of Police Department), R/o Vijya Residence,
Block - 4, Quarter No. 201, Second Floor, Vijya Puram, In Front Of
Science Collage, Sipat Road, Bilaspur, District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of Home And Police Affairs, Secretariat, Mahanadi Bhawan, New Raipur, P.S. And Post Rakhi, District Raipur, Chhattisgarh
2. Director General Of Police, Police Head Quarter, New Raipur, P.S. Rakhi, District Raipur, Chhattisgarh
3. Joint Director Of Division (Funds Account And Pension) Bilaspur, District Bilaspur, Chhattisgarh
4. The Director, Treasury, Audit And Accounts Raipur, District Raipur Chhattisgarh
5. The Superintendent Of Police Bilaspur, District Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Badruddin Khan, Advocate
For State	:	Ms. Sunita Jain, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18.06.2019**

1. The challenge in the present writ petition is to the deduction of Rs. 68,047/- from the gratuity amount paid to the petitioner.
2. The petitioner was working as a male nurse in the Police Department,

Bilaspur. He stood retired from service w.e.f. 28.02.2018. On his retirement, the petitioner was paid his retiral dues. However, while the gratuity amount was released, an amount of Rs.68,047/- was deducted and the remaining amount was released to the petitioner. It is this deduction of Rs.68,047/- which is under challenge in the present writ petition.

3. The contention of the counsel for the petitioner is that the respondent authorities have never issued any notice before initiating recovery proceeding against the petitioner. The recovery order is also without affording an opportunity of hearing to the petitioner. Moreover, the contention of the counsel for the petitioner is that the petitioner was not in any manner responsible for the alleged excess payment which he had received. The error that has been detected is one which was committed by the officers of the respondent State for which the petitioner is not responsible in any manner. He submits that the deduction so made is also in violation of the decision of the Hon'ble Supreme Court in the case of ***"State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc."*** reported in ***2015 AIR SCW 501***.
4. State counsel, however, justifying the action of the respondents submits that the respondents while settling the retiral dues of the petitioner found that the petitioner had been paid something which he was not entitled for. He submits that the excess amount paid to the petitioner was on account of erroneous fixation of pay which has been rectified and the excess amount paid to the petitioner has been recovered.
5. Having heard the contentions put forth on either side and on perusal of

the record what is clearly reflected is that the petitioner was a Class-III employee retired on the post of male nurse in the Police Department w.e.f. 28.02.2018. The alleged erroneous fixation of pay was took place in the year 1987 i.e. about 32 years prior to the retirement of the petitioner. The petitioner was not responsible for the alleged erroneous fixation of pay. Moreover, the petitioner has never been issued with a notice of the said erroneous fixation of pay at any point of time.

6. Given the aforesaid facts and circumstances of the case, it would be relevant at this juncture to refer to the judgment of the Supreme Court in the case of Rafiq Masih(supra). The Hon'ble Supreme Court while deciding such issue has laid down certain situations under which the recovery is totally impermissible under law. Some of situations as envisaged in the said judgment 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.”

7. A plain perusal of the aforesaid situations would clearly show that the case of the petitioner also fits into all such situations enumerated above and as such the recovery becomes impermissible under law. Once when the Hon'ble Supreme Court has held that under those situations the recovery would become impermissible, the action of recovery of Rs.68,047/- from the gratuity amount payable to the petitioner becomes

unsustainable and the same is accordingly set aside/quashed.

8. Thus, the writ petition stands allowed. It is directed that the recovered amount shall be refunded to the petitioner forthwith preferably within a period of 60 days from the date of receipt of copy of this Order.

Sd/-
(P. Sam Koshy)
JUDGE

Khatai