

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5735 of 2019

Dipika Xalxo W/o Nabor Xalxo Aged About 41 Years R/o Lig Flat No. 367 Block No. 16, Housing Board Colony, Kachna Road, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

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

---Respondents

For Petitioner	:	Mr. Akash Kumar Kundu, Advocate
For State	:	Mr. Chandresh Shrivastava, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/08/2019

1. The challenge in the present writ petition is to the orders Annexure P/1 dated 05.04.2019 and Annexure P/2 dated 25.09.2018, whereby the respondents have initiated recovery proceedings against the petitioner for an amount of Rs.2,74,018/-.
2. The said recovery amount is on account of certain excess payment made to the petitioner on account of wrong fixation of pay granted to the petitioner w.e.f. 01.01.2016 to 01.07.2018.
3. The contention of the petitioner is that the petitioner is presently working as a Nursing Sister, which is a class-III post and that the petitioner has

never made any misrepresentation or played fraud with the respondents for receiving the said erroneous fixation of pay. According to the petitioner, the said recovery is also impermissible in the light of the judgment 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. The further contention of the petitioner is that the said alleged excess payment also was paid to the petitioner first time around 9 years ago i.e. in the year 2008 and on this reason also the recovery could not have been initiated.
5. At this juncture it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***“Rafiq Masih”*** (supra). The Hon'ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery is totally impermissible under law. The situations as envisaged in the said judgment are as under :

“(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. If we consider the situations, under which the Hon'ble Supreme Court has held recoveries to be impermissible under law and compare the facts of the present case, it would clearly reflect that the case of the petitioner would squarely fall within the situations as envisaged in the

judgment of the Hon'ble Supreme Court in the case of "**Rafiq Masih**" (supra).

7. The impugned order Annexure P/1, in the light of the aforesaid judgment of the Hon'ble Supreme Court is unsustainable as the recovery is impermissible under law and the same is bad in law and deserves to be and is accordingly set-aside/quashed.
8. It has been informed by the petitioner that the entire amount has been deducted by the respondents and the respondents have also adjusted an amount of Rs.43,920/- as arrears of pay, which was payable to the petitioner.
9. Given the said submissions it is ordered that since the order of recovery is impermissible under the law, the petitioner would be entitled for the entire refund of the amount recovered till now and also release of the amount of arrears of pay that would be payable to the petitioner as per the rectified pay-scale.
10. The writ petition stands allowed to the extent of quashing the order of recovery, however the State Government would be entitled for making the rectification of the erroneous fixation of pay and for recalculating the payment that the petitioner would be received.

Sd/-
(P. Sam Koshy)
Judge

Ved