

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 5818 of 2019

Mamta Ray W/o Shri Nirmal Chandra Roy, Aged About 59 Years, R/o Laxmi Nagar, H.No. 43/2, Pachpadi Naka, 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	:	Mr. Akash Ku. Kundu, Advocate
For State	:	Ms. Akanksha Jain, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

06.08.2019

1. The challenge in the present writ petition is to the order (Annexure P/1) dated 19.12.2016, whereby the respondents have initiated recovery proceeding against the petitioner for an amount of Rs.1,12,107/-.
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, when she was promoted way back in July, 2008 as is reflected from Annexure P/1 dated 19.12.2016.

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 from the salary of the petitioner and therefore prays for an appropriate direction for refund of the entire recovered amount.
9. Given the aforesaid facts, it is ordered that since the order of recovery is impermissible under the law, the respondents shall forthwith release the entire recovered amount to the petitioner without any further delay preferably within a period of 4 months from today. It is made clear that the impugned order is being set aside only so far as the recovery part is concerned. As regards the justification part, this Court has not interfered with the same.

Sd/-
(P. Sam Koshy)
Judge