

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6077 of 2019**

Dr. Pramod Kumar Sharma S/o Late Shri Manni Lal Sharma Aged About 65 Years Occupation Service (Retired) Ayurvedik Medical Officer(Class-II) Government Ayurvedik Hospital Khadgaon Tahsil Dharamjaigarh District - Raigarh, Chhattisgarh...Presently Residing At Ward No.07 Patrapara Dharamjaigarh, District- Raigarh. Chhattisgarh.

----Petitioners**Versus**

1. The State of Chhattisgarh Through The Secretary, Department of Medical Health Service and Family Welfare New Mantralaya New Raipur, Chhattisgarh.
2. The Director Ayurved Yog Evam Prakritik Chikitsa, Unani Siddh Evam Homeopathy (Ayus) Raipur, District- Raipur, Chhattisgarh.
3. The District Ayurvedik Medical Officer Panjari Plant, Collectorate Road, Raigarh, District - Raigarh, Chhattisgarh.
4. The Accountant General Baloda Bazar Road, Zero Point Raipur, District - Raipur, Chhattisgarh.
5. The Joint Director Treasury, Accounts and Pension Division Bilaspur, District - Bilaspur, Chhattisgarh.

----Respondents

For Petitioner	:	Shri Vivek Bhakta, Advocate.
For State	:	Shri P. Acharya, Panel Lawyer.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****14.08.2019**

1. Challenge in the present writ petition is to the order dated 26.07.2019 (Annexure P/1) whereby the respondents have ordered for recovery of excess payment which was paid to the petitioner between the period 01.04.2006 to 01.07.2015. The amount ordered to be recovered is Rs.1,97,076/-.
2. The contention of the petitioner is that, the petitioner was working as Ayurved Medical Officer, a Class-II post, under the respondents-State. He stood retired from service w.e.f. 31.07.2019. Just five days before his retirement, the impugned order Annexure P/1 has been issued showing

recovery to be made from the dues payable to the petitioner. The petitioner is not, in any manner, directly or indirectly responsible for the alleged excess payment received by him. The alleged excess payment is said to have been paid to the petitioner around 13 years prior to the petitioner being placed under retirement and the impugned order of recovery being issued. He further submits that before issuance of the said order of recovery, there has been no opportunity of hearing given by the respondents to determine the alleged excess payment.

3. The State counsel, on the other hand, opposing the petition submits that it is a case where at the time of settlement of dues was being done, it was detected that the petitioner was paid something excess which he was otherwise not entitled for and therefore in the course of calculation it was detected that the petitioner has received an amount of Rs.1,97,076/- as excess payment. Thus, the department has ordered for recovering the said excess payment. It is further the contention of the respondents that since the petitioner is neither a Class-III or Class-IV employee nor is he a low paid officer and therefore, the recovery proceedings initiated by the State cannot be said to be bad in law.
4. Having heard the contentions put-forth on either side and on perusal of records, what is apparently clear is that the impugned order of recovery has been issued more than 13 years after it was first paid to the petitioner. It is not the stand of the State that the petitioner was, in any manner, responsible for obtaining the alleged excess payment. The alleged excess payment has been made to the petitioner on account of wrong fixation given by the officers of the State Govt.
5. Given the aforesaid admitted factual position as it stands, this court is of the opinion that the case of the petitioner would stand squarely covered by the decision of the Supreme Court in case of State of Punjab Vs. Rafiq

Masih, 2015 (4)SCC 334, wherein the Supreme Court has in categorical terms given certain situations under which recovery from an employee has been declared to be impermissible under the law.

6. The admitted factual position narrated in the preceding paragraphs would make it clear that the same would get attracted to the situations mentioned in the judgment of Rafiq Masih (Supra). The undisputed fact also is that the said excess payment has not been made on account of any misrepresentation or any act on the part of the petitioner, but the same has occurred only on account of mistake committed by the respondents. The error whatsoever was at the hands of the officer of the respondents.
7. Given the aforesaid factual matrix of the case, this court has no hesitation in holding that the order of recovery issued against the petitioners 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 26.07.2019 deserves to be and is hereby set aside.
8. The respondents are directed to ensure that the dues payable to the petitioner is released to him at the earliest without any further delay.
9. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge