

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.6586 OF 2019**

Madan Lal Sahu S/o Ganga Ram Sahu Aged About 61 Years Working As Auditor and Posted At Office of Commissioner Raipur, Division Raipur District Raipur Chhattisgarh.

...Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, Department Of Revenue, Mahanadi Bhawan, Mantralaya New Raipur, District Raipur Chhattisgarh.
2. Commissioner Raipur, Division Raipur District Raipur Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Ajay Shrivastava, Advocate.
For Respondent-State	:	Ms. Sunita Jain, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02.09.2019

1. The challenge in the present writ petition is to the order Annexure P/1 dated 10.07.2019 whereby the respondents have ordered for recovery of Rs. 44,600/- on account of certain erroneous fixation that have been crept in the fixation of pay of the petitioner w.e.f. 01.01.1996.
2. The contention of the counsel for the petitioner is that the impugned order is bad in law for the reason that the petitioner was appointed way back on 01.02.1980 and has already been promoted to the post of UDC on 30.05.1985 and later on was also promoted as Assistant Grade-II/Accountant vide order dated 06.10.1986. He was also promoted as Auditor w.e.f. 28.07.2011. According to the petitioner, now after having worked with the department for a period of about 39 years, the respondents have issued the impugned order of recovery stating that there has been an erroneous fixation of pay given to the petitioner w.e.f. 01.01.1996 and have ordered for recovery of the said amount in this regard.
3. The counsel for the petitioner submits that first of all, the petitioner is a Class-III post holder and that there was never misrepresentation or fraud

played by the petitioner for obtaining the same. Moreover, since the erroneous fixation was paid to the petitioner more than two decades ago and for this reason also the recovery could not have been made. Counsel for the petitioner submits that the said recovery is also bad in law for the reason that such recovery has been held impermissible under law 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***. He further submits that before issuance of the said order of recovery, the respondents had not provided any opportunity of hearing to the petitioner.

4. State counsel, however, opposing the petition submits that it is a case where admittedly the petitioner has been paid something extra which otherwise he was not entitled for. According to the respondents, immediately on the respondents detecting the excess payment made to the petitioner, they have issued the order of recovery since the petitioner is still in service.
5. Having heard the contentions put forth on either side and on perusal of the record, admittedly the petitioner is a Class-III post holder. From perusal of record it appears that there is no opportunity of hearing given to the petitioner. There is no contention of the respondents that erroneous fixation was made on account of any misrepresentation or fraud played by the petitioner. The alleged erroneous fixation is said to have been paid first in the year, 1996 i.e. more than 20 years back.
6. Given the aforesaid facts, it would be relevant at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of ***Rafiq Masih*** (supra) wherein it has been very emphatically held by the Supreme Court that in the given situations, the recovery would be impermissible under

law. Some of the situations in the said judgment of **Rafiq Masih** (supra) are reproduced hereinunder:

“11. Recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

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(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. Taking into consideration the aforesaid situations and comparing the same with the facts of the present case, this Court is of the opinion

that the case of the petitioner stands squarely covered by the judgment of the Supreme Court in the case of **Rafiq Masih** (supra). Moreover, the petitioner has not been given any opportunity of hearing before the impugned order was passed.

8. Thus, the impugned order of recovery is not sustainable and the same deserves to be and is accordingly set aside/quashed. The writ petition stands allowed reserving the right of the respondents to issue a notice to the petitioner before passing a fresh order. So far as recovery part is concerned, the same would not be permitted to be made. So far as rectification part is concerned, the same can be carried out subject to petitioner being given an opportunity of hearing to defend his case as to whether he is entitled for erroneous fixation that is alleged to have been given to him or not.
9. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge