

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.6988 OF 2019**

Smt. M. George W/o K. M. Thomas aged About 66 Years LIG 30, Sector 1
Shankar Nagar, Raipur, Chhattisgarh.

...Petitioner(s)

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.

... Respondent(s)

For Petitioner	:	Shri JK Gupta, Advocate.
For Respondent-State	:	Shri Jitendra Pali, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09.09.2019

1. Challenge in the present writ petition is to the order of recovery dated 04.01.2016 passed by the respondent No.3.
2. The facts of the case is that, the petitioner was working as Nursing Sister under the respondent No.3 and who retired from the service w.e.f. 30.11.2015. The respondent, subsequent to her retirement issued the impugned order on 04.01.2016 whereby the respondents have ordered for recovery of an amount of Rs.93,860/- which is alleged to have been paid in excess to the petitioner during the period 01.07.2008 to 01.07.2015. The said excess payment has been made because of the erroneous fixation of pay given to the petitioner.
3. The contention of the petitioner is that, firstly the order of recovery is bad in law as the same has been issued after retirement, thus, is impermissible. He further submits that the petitioner at no point of time is

held responsible for the alleged excess payment. The alleged excess payment was first time paid to the petitioner roughly more than 15 years before his retirement and before the order of recovery was issued. The said order of recovery is in violation of the judgment of Supreme Court in the case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334.

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. Further, since the writ petition has been filed after more than three years, the same should be rejected on the ground of delay and laches.
5. Having heard the contentions put forth on either side and on perusal of the record, admittedly the petitioner was a Class-III post holder. The order of recovery has been issued post retirement. Erroneous payment was paid first time to the petitioner more than 15 years prior to his retirement. The petitioner, at no point of time is held responsible for the alleged excess payment, if any, received by her.
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:

(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). Thus, the impugned order of recovery Annexure P-1 dated 04.01.2016 is not sustainable and the same deserves to be and is accordingly set aside/quashed.
8. It has been informed by the petitioner that the entire amount has been deducted from the dues 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 total amount of Rs.93,860/-.
10. Under the said facts and circumstances of the case, this Court is of the opinion that since the action of the recovery is held to be bad, the respondents are directed to immediately refund the entire amount recovered forthwith to the petitioner within an outer limit of 90 days from the date of receipt of the copy of this order.

Sd/-
(P. Sam Koshy)
Judge