

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 7649 of 2019**

Surya Pratap Singh S/o Late Shri K.P. Singh aged About 62 Years, R/o 2nd Battalion, Sakri, Quarter No. 110, A-Block, Police Station-Sakri, Tahsil and Distt. Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Its Secretary, Department Of Home (Police), Mahanadi, Mantralaya, Police Station and Post - Rakhi, Atal Nagar, Raipur, District - Raipur Chhattisgarh
2. Additional Director General Of Police (A.D.G.P.) Chhattisgarh Armed Force (CAF), Police Headquarters (PHQ), Police Station and Post - Rakhi, Atal Nagar, District - Raipur Chhattisgarh
3. Commandant 11th Battalion (I/R), Chhattisgarh Armed Force (CAF), Janjgir-Champa, District Janjgir-Champa Chhattisgarh

---- Respondents

For Petitioner	:	Ms. Aarti Manjhi, on behalf of Mr. Abhishek Pandey, Advocates
For State	:	Ms. Akansha Jain, Dy. GA

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/09/2019**

1. The challenge in the present writ petition is to Annexure P/1 & P-2 whereby on account of erroneous fixation of payt the respondents have ordered for recovery of an amount of Rs.1,66,640/-.
2. Contention of the petitioner is that the petitioner is working as a Head Constable and is due to retire on 30.09.2019 i.e. this month. Further

contention of the petitioner is that the respondents have recently issued Annexure P-1 & P-2 showing that the petitioner has been given excess amount of Rs. 1,66,640/- on account of erroneous fixation of pay which w.e.f. 01.07.2006 to 01.07.2016 and thus this excess amount is being ordered to be recovered from dues payable to the petitioner on his retirement.

3. According to the petitioner the said order of recovery is bad in law for the reason firstly that petitioner is a Class-III post holder. Secondly, the petitioner is retiring in this month i.e. the month in which the order of recovery has been issued. Thirdly, the petitioner is not at fault for the alleged erroneous fixation of pay, if any paid to the petitioner. Fourthly, the said erroneous fixation of pay has been made in July, 2006 i.e. about 13 years prior to the date of issuance of recovery. Thus, the impugned order is liable to be held to be bad in law.
4. State counsel on the other hand submits that order is not erroneous for the reason that since the petitioner is still in service and at the time of his retirement, when the settlement was being made, it was detected that petitioner has got erroneously paid certain excess amount w.e.f. 01.07.2006 to 01.07.2016 and this has been quantified at Rs. 1,66,640 and therefore the respondents have issued an order of recovery. According to the State counsel since the petitioner has received certain excess amount which otherwise under the rules petitioner is not entitled for, the order of recovery cannot be said to be bad in law. Thus, prayed for rejection of the writ petition.
5. Having heard the contentions put forth on either side and on perusal of records the admitted factual matrix of the case what is undisputed

is that the petitioner is a Class-III post holder working on the post of Head Constable. The alleged erroneous payment first made to the petitioner about 13 years back from the date of recovery i.e. in July, 2006. The order of recovery has been passed at the time of retirement of the petitioner who is to retire this month i.e. 30.09.2019. It is also undisputed fact that petitioner is not being blamed for being responsible for the erroneous excess payment that petitioner has received.

6. At this juncture it would be relevant to refer to 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**. 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."

7. If we consider the situations, which the Hon'ble Supreme Court has held 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).
8. Thus, the impugned order Annexure P/1 & P/2 in the light of the aforesaid judgment of the Hon'ble Supreme Court holding it unsustainable and the recovery being impermissible under law and the same is bad in law and deserves to be and is accordingly set-aside/quashed.
9. Quashment of the order of recovery would not come in the way of the respondents in rectifying the error crept in by granting proper fixation to the petitioner. However, respondent State would not be permitted to make any recoveries as such.
10. With the aforesaid observations, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge