

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 7299 of 2018**

- Suresh Chandra Verma S/o Late Shri P.K. Verma Aged About 61 Years
Occupation Subedar (M)/ Head Clerk Working Under The Office Of Inspector
General Of Police ,bilaspur District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Home ,finance And Police Affairs
Mahanadi Bhawan New Mantralya Raipur Chhattisgarh
2. The Director General Of Police Police Head Quarter ,raipur District Raipur
Chhattisgarh
3. Inspector General Of Police Bilaspur District Bilaspur Chhattisgarh
4. Superintendent Of Police Bilaspur District Bilaspur Chhattisgarh
5. The Joint Director Treasury Account And Pension Bilaspur District Bilaspur
Chhattisgarh

---- Respondents

For Petitioner : Shri R.K. Kesharwani, Advocate

For Respondents/State : Ms. Binu Sharma, PL

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****10/12/2019**

1. Heard.
2. The present petition is filed for the following reliefs:-

“10.1 That this Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of petitioner.

10.2That, this Hon'ble Court may kindly be pleased to set-aside/quashed the order dated 16.10.2018 (Annexure P-1) passed by the respondent No.5.

10.3 That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to pay regular pay scale its grade pay of Rs.5400/- without any deduction.

10.4 That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to remit back the recovered amount with interest whatever recovered from the salary of the petitioner.

10.5 That, this Hon'ble Court may kindly be pleased to grant any other relief, as it may deem fit.

10.6 Cost of the petition may also be given.”

3. The petitioner stands retired on 30.11.2018. He was a Subedar and was working with the Police Department of respondent State. The recovery notice dated 16.10.2018 (Annexure P-1) was served to the petitioner before the retirement on the ground that he has been paid the excess payment in the salary, therefore, the said amount is recoverable from the pension payable to the petitioner. The said recovery notice is subject of challenge in this petition.
4. Learned counsel for the petitioner would submit that the petitioner after completion of 10-12 years of service was granted benefit of time scale pay according to the existing circular of the State. It was way back in the year 2014 and no fraud or misrepresentation was played to obtain the payment. It is stated that after lapse of 4 years just before his retirement the impugned recovery notice dated 16.10.2018 (Annexure P-1) was served. He would further submit that the case in hand is covered by the authoritative judgment passed by the Supreme Court in ***State of Punjab and others Versus Rafiq Masih (White Washer) and others {(2015) 4 SCC 334}***, wherein in the like nature of case the recovery has been completely made barred. It is stated that therefore, in view of the law laid down by the Supreme Court no recovery can be made for the reason that just before the retirement the petitioner was served with the notice of recovery and no undertaking was ever given by the petitioner

while the time pay scale was given.

5. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the petitioner and would submit that the case of **Rafiq Masih (supra)** is distinguishable and she has placed reliance in the case of **High Court of Punjab and Haryana and others Versus Jagdev Singh {(2016) 14 SCC 267}** and would submit that in case the excess amount is paid to the employee, the same can be recovered from the retiral dues of the employee i.e. the petitioner herein.
6. I have heard learned counsel for the parties and perused the documents.
7. Admittedly, the petitioner was retired on 30.11.2018 and just before one month of the retirement he was served with the notice, whereby the recovery was contemplated on the ground that the excess payment was made to him while he was given the benefit of time scale pay. In case of **State of Punjab and others Versus Rafiq Masih (White Washer) and others {(2015) 4 SCC 334}** the Supreme Court at para 18 has laid down the situations, wherein recoveries by the employers, would be impermissible, which is reproduced hereinbelow:-

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the 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."

8. The petitioner claims that he belongs to Class-III cadre and is covered under the above situation (i) & (ii) which envelops the situation that the recovery from the Class-III employee was not permissible. Further the recovery from the retired or the employee who are due to retire within one year, the order of recovery would not be permissible.
9. In the return filed by the State nothing has been placed on record to show that the petitioner was placed on a notice of fact if the payment found made in excess would be required to be refunded and consequently no undertaking was furnished by him. In absence of such fact, the principles of ***High Court of Punjab and Haryana and others Versus Jagdev Singh {(2016) 14 SCC 267}*** would not be applicable. The pleadings to such effect are also unavailable. In a result, following the principles laid down by the Supreme Court that the recovery could not be made prior to one year of the retirement, the recovery from the petitioner cannot be sustained. Accordingly, the impugned recovery notice dated 16.10.2018 (Annexure P-1) is quashed.
10. Accordingly, the petition stands allowed.

Sd/-

Goutam Bhaduri
Judge