

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 8573 of 2019**

- Raghuveer Prasad Vishwakarma, S/o Late Shri N.P. Vishwakarma Aged About 63 Years, R/o Quarter No. 725 / B, Ganganagar, Sector-2, Mangla, Bilaspur, Police Station- Civil Line, Tehsil And District- Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Its Secretary, Water Resource Department, Mahanadi Bhawan, Mantralay, P.S. And Post- Rakhi, Atal Nagar, Raipur, District- Raipur, Chhattisgarh
2. Joint Director Office Joint Director, Kosh, Lekha And Pension, Bilaspur Division, District- Bilaspur, Chhattisgarh
3. Executive Engineer Office Of Executive Engineer, Water Resource Division, Korba, District- Korba, Chhattisgarh

---- Respondents

For Petitioner : Shri Abhishek Pandey, Advocate

For Respondents/ State : Shri Avinash Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****17/10/2019**

1. The grievance of the petitioner is that the petitioner was working in the post of Assistant Engineer in the office of Executive Engineer Water Resource Division, Korba and was retired vide order dated 30.04.2019. It is contended that after 5 months of retirement a recovery notice has been issued Annexure P-2, wherein recovery of excess amount on account of wrong fixation was sought for the period of 01.07.1989 to 31.12.1995 and subsequent excess fixation has been attributed for the period of 01.01.06 to 31.12.2015. It is contended that

the said recovery could not be made from retired public employee as the case squarely covered by "***State of Punjab and others etc. Vs. Rafiq Masih (White Washer) and others.***" reported in 2015 AIR SCW 501. He further submits that similar issue has been decided by Co-ordinate Bench of this Court in WPS No. 5796 of 2019, wherein the same ratio of law has been laid down by the order dated 06.08.2019 and the issue is squarely covered by this.

2. Learned State counsel opposes the argument and submits that at the time of fixation of retiral dues the effect was recovered, therefore, the recovery sought for is well merited and do not call for any interference.
3. The Supreme Court in case of Rafiq Masih (supra) has laid down the following ratio:-

(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 01.01.06 to 31.12.2015 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.

4. When the recovery sought for petitioner Annexure P-2 is examined in the parameters of the ratio laid down it would show that the recovery sought for is primarily after the retirement and excess fixation of pay

was of period 01.07.1989 to 31.12.1995 and subsequent was of 01.01.06 to 31.12.2015. The initial error which have been projected is from 01.07.1989 to 31.12.1995 thereafter from 01.01.06 to 31.12.2015. It also reveals that the respondent have not given opportunity of hearing and had issued the impugned order of recovery in the light of judgment of Supreme Court in case of Rafiq Masih (supra) the action in part of respondents is bad in law and not and sustainable.

5. As a result, the recovery notice order dated 28.09.2019 (Annexure P-2) is quashed. Since it has been contended that the respondents had made certain recovery it is directed that recovery so made shall be returned to the petitioner and the entire retiral benefit dues to the petitioner to be released without any delay and no further recovery shall be made.
6. Accordingly, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge