

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 637 of 2020

Santram Dhurve S/o Thaga Ram Dhurve, Aged About 62 Years
Retired Forest Guard, Village And Post Patharia, District Mungeli
(Chhattisgarh)

---- Petitioner

Versus

1. The State Of Chhattisgarh Through The Department Of Forest,
Mahanadi Bhawan, Mantralaya New Raipur, District Raipur
Chhattisgarh
2. The Divisional Forest Officer, Bilaspur Division, District Bilaspur
Chhattisgarh

---Respondents

For petitioner – Shri Aditya Chopra, Advocate.
For State- Ms. Akansha Jain, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

06/10/2020

Heard.

1. Instant petition has been filed to quash the recovery notice dated 07/09/2019 (Annexure P-1) whereby recovery of Rs.1,81,596/- has been sought for.
2. It is contended that the petitioner was a class-III employee working as forest guard under the respondent No.2 and he retired from the service on attaining the age of superannuation on 30/09/2019. On 07/09/2019 recovery notice of Rs.1,81,596/- was given on the ground that the petitioner was paid excess payment of salary by wrong fixation of pay scale. Consequently entire pension proceeding of the petitioner has been withheld. Learned counsel relies on the case law **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. reported in 2015 AIR SCW 501** and would submit that under the law laid in case of **Rafiq Masih** no recovery can be made from the petitioner.
3. Learned State counsel opposes the argument and would submit

that because of the wrong fixation of pay excess amount was paid to the petitioner and State was within its right to recover the amount.

4. Heard learned counsel for the parties.

5. Perused the documents. It is not in dispute that the petitioner who was working as a forest guard class-III employee had attained the age of superannuation on 30/09/2019. According to the reply filed by the State wrong fixation of pay was done. Consequently, the petitioner was paid excess amount while salary band was revised. Along with the reply no document is on record to substantiate the fact while the salary band was revised any undertaking was given by the petitioner that in case of any mistake in settlement of the fixation of the salary he would pay back the same. The document filed along with petition shows the recovery notice was served to petitioner on 17/12/2019 after the petitioner stood retired by Annexure P-2 and an office order which is filed as Annexure P-1 is dated 7/09/2019 is soon before retirement. The alleged excess payment also is not on account of any fraud or mis representation made by petitioner.

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.

12. xxxxxxxxxx

(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 aforesaid law laid down by the Supreme Court and translating into facts of the present case, in the opinion of this court, case of the petitioner stands squarely covered by the judgment of the Supreme Court in the case of **Rafiq Masih** (supra). The petitioner is a class-III employee and according to the law laid down by the Supreme Court recovery from the employee belonging to class-III would be completely barred. There is nothing on record to show that any undertaking was given by the petitioner that in the event of wrong fixation of pay the respondent would have the right to recover the excess amount.

8. In view of the aforesaid facts and circumstances, recovery notice dated 07/09/2019 (Annexure P-1) and notice dated 17/12/2019 (Annexure P-2) issued by the respondent stands quashed. The respondents are

directed to finalize all the retiral dues and the pension of the petitioner within a period of 45 days from the date of receipt of this order as appears since 30/09/2019 after the petitioner has attained the age of superannuation he is not in receipt of the amount of any retiral dues.

9. With the above observation, the writ petition stands allowed.

Sd/-

(Goutam Bhaduri)

JUDGE