

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 4518 OF 2020**

Yashin Mohammad S/o Late Sultan Mohammad Aged About 63 Years
Sevanivrit Pradhan Aarakshak, Karyalay Police Adhikshak Bilaspur, Nivasi
- Mohalla Yadunandannagar Tifra, Distt.- Bilaspur (Chhattisgarh).

... Petitioner

versus

1. State of Chhattisgarh Through Sachiv Grih Wa Police Vibhag, Naya Raipur, Distt. Raipur Chhattisgarh.
2. Police Adhikshak Bilaspur, Distt.- Bilaspur (Chhattisgarh).
3. Collector Bilaspur, Distt.- Bilaspur Chhattisgarh.
4. Sambhagiya Sanyukt Sanchalak Kosh Lekha Evam Pensions Vibhag Bilaspur, Distt. Bilaspur (Chhattisgarh).
5. Zila Koshalay Adhikari Bilaspur, Distt. Bilaspur Chhattisgarh.

... Respondents

For Petitioner	:	Shri Abdul Wahab Khan, Advocate.
For Respondents-State	:	Shri Vivek Ranjan Tiwari, Addl. AG.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/11/2020

1. Challenge in the present Writ Petition is to the action on the part of the Respondents in making recovery of an amount of Rs. 2,19,179/- from the gratuity amount paid to the Petitioner.
2. The recovery of the aforesaid amount has been made on the alleged ground of certain excess payment made to the Petitioner while he was in service. According to the Respondents, the Petitioner has been erroneously paid certain excess amount which he was not otherwise entitled for and this erroneous payment made to the Petitioner was detected in the course of the final settlement being made after his retirement and therefore the said amount is ordered to be recovered from the gratuity amount payable to the Petitioner.
3. Petitioner was working as a Head Constable under the Respondents and he retired from service on attaining the age of superannuation with effect from 29.02.2020. Admittedly, the Petitioner was working in the Class-3 cadre. After the Petitioner had retired, as per the requirement and the procedure, the Petitioner had submitted 'No Dues Certificate' from all the concerned departments which had specifically mentioned that there was no amount recoverable from the Petitioner and the settlement of his retiral dues were initiated. However, in the

course of settlement, an amount of Rs. 2,19,179/- was ordered to be recovered from the gratuity amount payable to the Petitioner. It is this action of recovery which is under challenge in the present Writ Petition.

4. Admittedly, it is not the case of the Respondents that excess payment made to the Petitioner was on account of any misrepresentation or fraud played by the Petitioner. Even if the said excess amount has been paid, the same has been paid on account of error made on the part of the officials of the Respondents. Recovery has been made after the retirement of the Petitioner. Petitioner was a Class-3 employee at the time of his retirement.

5. At this juncture, it would be relevant to take note of a landmark judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. (2015 AIR SCW 501)** wherein the Supreme Court has laid down certain situations where it has been categorically held that it would be impermissible under law for the employer to make recovery. 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.”

6. Taking note of the aforesaid judgment of the Hon'ble Supreme Court which has also been reiterated in many other subsequent decisions of the Supreme Court, this Court finds that the case of the Petitioner squarely falls in most of the situations that are reflected in the aforesaid judgement of the Hon'ble Supreme Court wherein it has been held that recovery becomes impermissible under law.

7. In view of above, the action on the part of the Respondents in recovering an amount of Rs. 2,19,179/- from the retiral dues of the Petitioner also is bad in

law and it would be otherwise impermissible under law in view of the judgment of the Hon'ble Supreme Court referred above.

8. The action on the part of the Respondents therefore deserves to be and is accordingly set aside/quashed and it is ordered that the Respondents shall refund the amount of Rs.2,19,179/- to the Petitioner, at the earliest, preferably within a period of 90 days. It is made clear that in the event if the refund is not made within the stipulated period of 90 days, the same shall carry interest at the rate of 10% from the date of recovery till the actual payment is made. However in case if the amount has not been recovered till now, in that event the retiral dues be released without any recovery being made including that from the Gratuity payable to him.

9. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P.Sam Koshy)
Judge

inder