

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4823 of 2020**

Smt. Snehlata Vishwas W/o Late Pramod Sharma, Aged About 62 Years
R/o P.W.D. Colony, Kabir Ward, Daupara, Mungeli, Tahsil And District
Mungeli Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Health And Family Welfare Department, Mantralaya, Atal Nagar, Nawa Raipur Chhattisgarh
2. The Accountant General, Chhattisgarh, Raipur Chhattisgarh
3. The Joint Director, Treasury, Accounts And Pension, Bilaspur Division, Bilaspur Chhattisgarh
4. The Chief Medical And Health Officer, District Mungeli Chhattisgarh
5. The Block Medical Officer, Block Mungeli, District Mungeli Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Sharad Mishra, Advocate
For State	:	Mr. Rahul Jha, GA
For Res. No.2	:	Mr. Rajkumar Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

16/12/2020

1. The grievance of the petitioner in the present writ petition seems to be the inaction on the part of the respondents in not releasing the retiral dues payable to the petitioner on retirement from service w.e.f 31.08.2020.
2. The challenge also is to the order Annexure P-1 whereby the respondents have ordered for initiating recovery proceedings against the petitioner in respect of the certain alleged erroneous fixation of pay made to the petitioner during the period from 1996 onwards.

3. The facts of the case in brief is that the petitioner was working as a Lab Technologist under the respondents being appointed in the year 1982 and she continued to remain in service till the age of superannuation on 31.08.2020. Subsequent to the retirement of the petitioner the respondents after about 2 months from the date of retirement have now issued Annexure P-1 & P-2 stating that in the course of the settlement of the dues it was detected that petitioner has been paid certain excess payment on account of erroneous revision of pay made during the period 1996 till the age of superannuation. It has been ordered for the recovery/adjustment of that excess payment from the dues payable to the petitioner.
4. Contention of the petitioner is that the alleged excess payment received by the petitioner is not on account of any misrepresentation on the part of the petitioner but was on account of the fault on the part of the respondents. Secondly it was the contention of the petitioner that the said erroneous fixation of pay was paid to the petitioner almost 24-25 years prior to her retirement. It was further contention of the petitioner that she otherwise belonged to the Class-II cadre post and that the petitioner was not responsible for having received the erroneous fixation of pay and thus the decision to recover the excess payment on account of respondents is bad in law. Counsel for the petitioner referred to the judgment of the Supreme Court in the case of ***“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”*** reported in ***2015 AIR SCW 501***.
5. The aforesaid factual matrix is not disputed by the counsel for the respondents, however counsel for the respondents submits that in the process of scrutiny of the dues payable to the petitioner it was detected that there was certain excess payment made to the petitioner while she was in service and the said excess payment was received by the petitioner from 1996 till the age of superannuation. Therefore, the department has a right to recover the excess payment paid to the petitioner or the amount

which the petitioner was not otherwise entitled for but has been wrongly paid to him.

6. Having heard the contentions put forth on either side and on perusal of records since the factual details referred to in the preceding paragraphs, the nature of employment and the alleged excess payment being made not on account of the fault of the petitioner and excess payment having been paid wayback about 24-25 years ago, it would be relevant at this juncture to take note of the judgment of the Supreme Court in the case of Rafiq Masih (Supra). The Hon'ble Supreme Court in the said judgment in Paragraph 18 has held as under :-

“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 herein above, 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 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. Plain reading of the aforesaid observations of the Supreme Court it clearly reflects that Supreme Court after considering the facts and circumstances of the case in respect of the excess payment issue had laid down certain situations under which the recovery becomes impermissible under law which is reproduced in the preceding paragraph.
8. Considering the situations reflected therein if we take into consideration the facts of the present case it can straightly by concluded that case of the petitioner also squarely falls within the situations cited by the Supreme Court where the recovery becomes impermissible under law.
9. In view of the same the decision on the part of the respondent State in initiating recovery proceedings against the petitioner is held to be bad in law and is accordingly set aside/ quashed. However, it is made clear that in the event of any erroneous fixation of pay the concerned State Government would have the liberty to carry out the rectification part. However, upon rectification the Government would be entitled for making actual payments in terms of the rectified pay scale without enforcing the recovery part if any.
10. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit