

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5123 of 2020**

1. Jailal Bareth, S/o Bhajraj Bareth, Aged About 66 Years, Retired Forest Guard, Village And Post- Sivani, District : Janjgir-Champa, 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	:	Mr. Aditya Chopra, Advocate.
For State	:	Mr. Sudeep Verma, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****14.12.2020**

1. The challenge in the present writ petition is to the impugned order of recovery Annexure P-2 and Annexure P-3 dated 08.08.2020 and 08.10.2020 respectively.
2. The brief facts of the case is that the petitioner was working as a Forest Guard under the respondents who on attaining the age of superannuation stood retired from service with effect from 31.05.2016. Initially the petitioner faced some difficulties; so far as his pension and gratuity payment was concerned, the petitioner was directed to deposit certain amount for releasing of the amount which the petitioner deposited and thereafter the

petition and other pensionary benefits have not been finalized. Subsequently, now Annexure P-2 and Annexure P-3 dated 08.08.2020 and 08.10.2020 are being issued holding that there was certain excess payment of Rs. 1,13,282/- paid to the petitioner while he was in service. The alleged excess payment seems to be paid on account of certain erroneous fixation of pay while he was in service.

3. The counsel for the petitioner submits that firstly the petitioner is a low-paid Class-III employee and he has retired about more than 4 ½ years ago, therefore, the recovery at this juncture would not be sustainable and would be impermissible under law. He further submits that even otherwise the alleged excess payment made was not because of any mis-representation on the part of the petitioner but on account of an error on the part of the respondents.
4. The State counsel on the other hand justifying the decision of the respondents submits that it is a case where in the process of determining the retiral dues payable to the petitioner, the respondents have detected certain excess amount paid to the petitioner on account of erroneous fixation of pay and they have while in the course of settling dues payable to the petitioner decided to initiate recovery proceedings.
5. Having heard the contentions put-forth on either side and on perusal of records, admittedly the petitioner was an employee working under the respondents in the Class-III category and who retired about 4 ½ years ago w.e.f. 31.05.2016, the alleged excess payment made was by the erroneous fixation of pay on the part of the respondents, the petitioner has not made any mis-representation or played any fraud for getting the fixation.
6. At this juncture it would be relevant to take note of the judgment of Hon'ble Supreme Court in the case of **Rafiq Masih (supra)** wherein in paragraph no. 18. the Hon'ble Supreme Court 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. A plain reading of the aforesaid observation of the Hon'ble Supreme Court, it clearly reflects that the Supreme Court has dealt-with the situations wherein the recovery would was held impermissible under law. Considering the situation mentioned in the said judgment , it clearly reflects the present case squarely falls with those situation reflected in the said judgment wherein the Hon'ble Supreme Court has categorically held that the recovery would be impermissible under law.
8. In view of the same, the decision to initiate the recovery proceedings against the petitioner vide two Annexure P-2 and Annexure P-3 dated 08.08.2020 and 08.10.2020 is not sustainable, tenable and is impermissible under law, the same deserves to be and is accordingly set-aside/quashed. The respondents are directed to ensure that the entire retiral dues payable to the petitioner is processed at the earliest and settled within a period of ninety days from the date of receipt of copy of this Order,

failing which the entire retiral dues shall carry interest @ 6 percent per annum from the date of retirement till the date of actual payment.

9. It is made clear that it is only the recovery proceeding or order which has being interfered and quashed by this Court, which in other words means, the respondents would be at liberty to carry rectification of the error without initiating recovery.
10. With the aforesaid observation and direction, the present writ petition stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
JUDGE**