

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 179 of 2021

1. Smt. Pushpalata Parichha W/o Philip Parichha Aged About 65 Years R/o B-6 Om Zone Subham Bihar Bilaspur District - Bilaspur Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through - The Secretary, Department of Women and Child Development Mahanadi Bhawan New Raipur District - Raipur Chhattisgarh.
2. The, Director, Directorate Of Woman And Child Development Block (A) Indrawati Bhawan New Raipur District - Raipur Chhattisgarh.
3. The, District Program Officer Women And Child Development District - Janjgir - Champa Chhattisgarh.
4. Joint Director, Treasury, Accounts and Pension, Bilaspur District - Bilaspur Chhattisgarh.

---Respondents

For Petitioner	:	Shri A. N. Pandey, Advocate.
For State	:	Shri Kapil Maini, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02.02.2021.

1. With the consent of the parties, the matter is heard finally at motion stage.
2. Challenge in the present writ petition is to the order of recovery dated 27.02.2018. Vide the said order the authorities have issued an order of recovery, recovering an amount of Rs.37,029/- from the retiral dues payable to the petitioner. The respondents have issued the said impugned order while settling the retiral dues and have paid the amount after adjusting the recovery amount. The alleged recovery has been made on the ground that while the petitioner was in service she has been granted some extra increment which she was otherwise not entitled for.
3. The contention of the petitioner is that the petitioner was working under the respondents as an Integrated Child Development Officer. She retired from service on attaining the age of superannuation on 31.08.2017. At the time

of retirement the petitioner has completed all the formalities for issuance of retiral dues, however, abruptly one fine morning much after retirement, the impugned order of recovery dated 27.02.2018 was passed ordering for recovery of Rs.37,029/- from the dues payable to the petitioner. The contention of the petitioner is that the order of recovery is impermissible under law for the reason that the said order of recovery has been issued without affording any opportunity of hearing thus, is violative of principles of natural justice. The order also is bad in law for the reason that the recovery is being made against the amount which was paid to the petitioner not on account of any mis representation or fraud played by the petitioner, but on account of an alleged error on the part of the respondents. The contention of the petitioner also is that the impugned recovery is bad in law for the reason that the recovery is being made post retirement in respect of claim which allegedly was paid to the petitioner long back while she was in service. The counsel for the petitioner relied upon judgment of Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334.

4. The State counsel on the other hand contended that since at the time of settlement of the retiral dues it was found that the petitioner had been wrongly granted extra increment which she was otherwise not entitled for and therefore this excess money paid to the petitioner on account of wrong fixation of pay has been ordered to be recovered from the dues payable to the petitioner. The same thus cannot be said to be bad in law. He further submits that even otherwise at the time of retirement an employee/officer has to give an undertaking in respect of recovery of any excess payment made, and in the instant case also the petitioner must have definitely given

an undertaking and on that basis also the recovery cannot be held to be bad in law.

5. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to take note of decision of the Supreme Court in case of Rafiq Masih (Supra) wherein in paragraph 18 the Supreme Court has laid down certain situations under which the recovery becomes impermissible under the law. For ready reference para 18 of the said judgment is being reproduced hereinunder:

“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.”

6. On going through the facts of the present case it clearly reflects that the case of the petitioner squarely meets most of the situations mentioned in the judgment of the Supreme Court wherein the recovery has been held to

be impermissible under the law. Thus, the case of the petitioner is squarely covered by the said judgment.

7. As regards the contention of the State that there is an undertaking given by the petitioner at the time of retirement is concerned, this court is of the opinion that the said undertaking firstly would be applicable in respect of any erroneous payment made to the petitioner by way of retiral dues or pensionary benefits. The said undertaking cannot be stressed to the extent of recovering an allegedly excess payment made long back while the employee was in service and for which the employee was not directly or indirectly responsible for receiving the same that to if at all wrongly paid.
8. As regards the alleged excess payment made long back while the employee was in service, the authorities would always have liberty to carry out the rectification part, but the excess payment so paid cannot be recovered in the light of the judgment of Supreme Court rendered in Rafiq Masih (Supra).
9. For the aforesaid reasons, the writ petition at this juncture stands allowed. The impugned order of recovery is held to be bad in law. The same deserves to be and is hereby set aside/quashed. The respondents are directed to ensure that the amount recovered from the petitioner's retiral dues to the extent of Rs.37,029/- be refunded back to the petitioner forthwith within a period of 60 days from the date of receipt of copy of this order.
10. The writ petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge