

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 497 of 2021**

Mahettru Ram Gond S/o Chamru Aged About 62 Years Retired Forest Guard, Village- Pondi, Post- Sarwani, District- Bilaspur (C.G.)

---- Petitioner**Versus**

1. 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 (C.G.)

---- Respondents

For Petitioner	:	Mr. Aditya Chopra, Advocate
For State	:	Mr. Vivek Ranjan Tiwari, Addl. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****08/02/2021**

1. The challenge in the present writ petition is to the impugned order of recovery dated 10.08.2020 Annexure P/2. Vide the impugned order the respondents have ordered for recovery of an amount of Rs.1,77,250/- from the petitioner on account of certain excess payment made to the petitioner starting from the year 2011 onwards.
2. The facts of the case is that the petitioner in the present writ petition working on the post of Forest Guard stood retired from service on attaining the age of superannuation w.e.f. 31.10.2020. It is said that on the date of retirement, the petitioner was handed with the impugned order dated 10.08.2020 whereby the order of recovery

has been issued. According to the petitioner, the recovery is said to be of an alleged excess payment made in the year 2011 and which continued up till 30.06.2020.

3. The grievance of the petitioner is that the petitioner as such has not made any misrepresentation or played fraud in any manner in getting the said alleged excess payment. The alleged excess payment if at all erroneously paid also has been on account of the error on the part of the respondents and not on the part of the petitioner. It is further contended that since the petitioner is a Low Paid Employee and he has bonafidely consumed all the benefits that the respondents had given rightly or erroneously, hence there could not have been any recovery proceedings initiated against the petitioner. If at all, if any error must have occurred, it was only the rectification part, which could have carried out, without any recovery.
4. The State counsel on the other hand submits that the impugned order of recovery has been issued a couple of months before his retirement, therefore it cannot be said that the notice has been issued after retirement, but it was while in service. Moreover, the recovery is only in respect of the excess payment made to the petitioner on account of wrong fixation of pay provided to him, which the petitioner was otherwise not legally entitled for and therefore the respondents had all the rights to recovery the same.
5. At this juncture it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***"State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc."*** reported in ***2015 AIR SCW 501***. The Hon'ble Supreme Court while deciding the said

matter has laid down certain situations under which the recovery is totally impermissible under law. 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. If we consider the situations, which the Hon'ble Supreme Court has held to be impermissible under law and compare the facts of the present case, it would clearly reflect that the case of the petitioner would squarely fall within the situations as envisaged in the judgment of the Hon'ble Supreme Court in the case of **“Rafiq Masih”** (supra).
7. The impugned order Annexure P/2, in the light of the aforesaid judgment of the Hon'ble Supreme Court is unsustainable as the recovery is impermissible under law and the same is bad in law and deserves to be and is accordingly set-aside/quashed. The order of recovery stands quashed. The respondents are directed to ensure that the entire retiral dues payable to the petitioner is paid at the earliest within a period of 90 days from the date of receipt of the copy of this order.
8. It is made clear that the impugned order has been effected only so

far as the recovery part is concerned. Any rectification part, the State would be at liberty to carry out the rectification on due verification of entitlement of the petitioner.

9. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved