HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3003 of 2013

Ram Vishnu Tiwari S/o Rambaran Tiwari Aged About 73 Years R/o 30 Hanuman Nagar, Durg, PS Mohan Nagar, Civil And Revenue Distt Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Home Department, Mahanadi Bhawan, Mantralaya New Raipur C.G.
2. State of Chhattisgarh, Through The Secretary, Treasury, Account And Pension Department Mahanadi Bhawan Mantralaya New Raipur C.G.
3. Joint Director, Treasury Account And Pension, Near Gandhi Chowk, Raipur C.G.
4. Senior Treasury Officer, Durg, District Durg C.G.

---- Respondents

For petitioner – Shri T.K. Tiwari, Advocate.

For State- Ms. Sunita Jain, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

18/02/2021

Heard.

1. Grievance of the petitioner is that the petitioner who was posted as ASI retired on 31/07/2001 and thereafter the pension started. It is contended that all of a sudden in the year 2013 the pension of the petitioner was stopped. When the enquiry was made, it was revealed that because of the excess payment in between the period 2008 to 2013 an amount of Rs.5,03,178/- have been paid in excess, therefore the recovery.

2. Learned counsel for the petitioner submits the petitioner being retired employee if the excess amount have mistakenly been made by the employer the same cannot be recovered in view of the law laid down by the Supreme Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) And Others** reported in **(2015) 4 SCC 334,** therefore he would further submit that no hearing was given before any such recovery was started, therefore recovery as sought for cannot be made.

3. Per contra, learned State counsel would submit that the petitioner served as Assistant Sub Inspector and on account of error on the part of concerned bank in pension payment. The petitioner was paid excess payment of revised pension as per sixth pay commission out of the fixed rate, thereby amount of Rs.5,03,178/- has been paid in excess. Consequently, the Treasury Officer was instructed to submit report and different excess payment made from 2008 to 2013 and tabulation chart was prepared. It is further submitted that excess amount which was paid the petitioner was not entitled to receive as such is liable to be recovered as it cannot be as a matter of right and as per Code Rules 57 & 59 of the Financial Code Rule the excess payment will be a debt and employee has to make good.

4. Having considered the rival submission of the petitioner the document was perused. It is undisputed that the petitioner retired in the year 2001 and the pension started. According to the reply of the State Annexure R/1 a correspondence by the Superintendent of Police, Durg dated 4/12/2013 is placed on record which purports that an amount of Rs.5,03,178/- was excess paid and the bank and the treasury has been made responsible and the letter of the Treasury Officer dated 5/12/2013 Annexure R/2 would show that the petitioner was paid excess payment of revised pension as per the sixth pay commission and the said excess payment has been made because of the faulty calculation, therefore it is not a case that on account of the petitioner playing any fraud or any misrepresentation the excess payment is made.

5. The Supreme Court case in **(2015) 4 SCC 334** in between **State of Punjab and Others Vs. Rafiq Masih (White Washer) And Others** has observed that where payments have mistakenly been made by the employer, in excess of their entitlement, there are certain guidelines have been issued and certain factors have been laid down that those recovery would be impermissible. Para 18 of the said judgement are reproduced hereunder:-

> "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 hereinabove, 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. Applying the aforesaid principle since the petitioner has retired and according to the respondent excess payment has mistakenly been made by the State the employer, the petitioner would be covered in (ii) as the recovery from the retired employee will be impermissible. Consequently, the recovery as sought for of Rs.5,03,178/- is quashed. It is however made clear that the petitioner if at all is entitled for the different rates of pension then the pension would be payable according to the entitlement of the petitioner. The restraint order of recovery of Rs.5,03,178/- shall not be treated as a creation of a right in favour of the petitioner for payment of future pension.

7. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE

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