

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 486 of 2021**

Saukhilal Dhruve S/o Shri Konda Ram Dhruve Aged About 63 Years R/o
Ward No. 15, Ramhepur, Lormi, Tahsil Lormi, District- Mungeli (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary (Home Department)
Mantralaya, Mahanadi Bhawan, New Raipur (C.G.)
2. Superintendent Of Police Bilaspur, District- Bilaspur (C.G.)
3. The Divisional Joint Director Treasury Accounts And Pension,
Bilaspur, Division District- Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Mr. S.B. Pandey, Advocate
For State	:	Mr. Wasim Miyan, Panel Lawyer

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

11/02/2021

1. The challenge in the present writ petition is to the order of recovery initiated by the authorities vide order dated 20.04.2020 (Annexure P/1), whereby the respondents have ordered for recovering an amount of Rs.1,93,042/- from the retiral dues payable to the petitioner.
2. The facts of the case is that the petitioner was working on the post of Head Constable, which is a class-III post. He retired from service on 31.12.2019. Till the date of retirement, he was not issued with any order of recovery or any show cause notice in respect of any excess payment. Subsequent to his retirement, while his retiral dues were

being paid, abruptly an amount of Rs.1,93,042/- was deducted from his gratuity and the balance amount was paid alleging the said amount to have been the excess amount paid to the petitioner while he was in service. According to the petitioner, he is not even aware of the fact as to during what period, was this excess payment paid to the petitioner, whether there was any false representation or any misrepresentation on the part of the petitioner in obtaining the same or not and without any show cause notice or an opportunity of hearing/defense the respondents have deducted an amount from the gratuity amount payable to the petitioner.

3. The State counsel on the other hand submits that 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 recover the same.
4. 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.”

5. If we consider the situations, under which the Hon'ble Supreme Court has held recoveries 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).
6. As stated in the judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra), the facts which make the recovery impermissible under law are firstly that the order of recovery is in respect of an alleged excess payment made after the retirement of the petitioner and secondly the petitioner is a class-III employee to add with it. There is no allegation against the petitioner of having made a misrepresentation or played fraud in getting the alleged excess payment. The action of recovery also is without affording any opportunity of hearing, which would amount to violation of the principles of natural justice. For all the aforesaid reasons, the recovery becomes impermissible under law.

7. Given the aforesaid facts and circumstances of the case, the impugned order of recovery (Annexure P/1) dated 20.04.2020 ordering for recovery of an amount of Rs.1,93,042/- is erroneous, bad in law and impermissible under law and the same deserves to be and is accordingly set-aside/quashed.
8. The respondents are directed to settle the retiral dues of the petitioner without initiating any recovery. It is made clear that the indulgence of this Court is only to the extent of recovery, the respondents would be at liberty to rectify the erroneous fixation provided to the petitioner without making any recovery. If the entire amount has already been deducted by the respondent authorities, the said amount should be forthwith released to the petitioner within an outer limit of 90 days from the date of receipt of the copy of this order.
9. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved