

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 636 of 2021**

Leeladhar Patel S/o Shri Balchand Patel Aged About 63 Years Than Posted
As Retired Dresser At Primary Health Center, Nandeli, R/o Village Kotmi,
P.S. Debhra, Tehsil Sakti, District Janjgir, Champa, Chhattisgarh

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Health And Family Welfare
Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, District Raipur,
Chhattisgarh
2. Accountant General Raipur District Raipur, Chhattisgarh
3. Joint Director Treasury Account And Pension Bilaspur, District Bilaspur,
Chhattisgarh
4. Chief Medical And Health Officer, Raigarh, District Raigarh, Chhattisgarh,
District : Raigarh, Chhattisgarh
5. Block Medical Officer Community Health Centre, Loing, District Raigarh,
Chhattisgarh

---- **Respondents**

For Petitioner	:	Mr. Ashutosh Trivedi, Advocate
For State	:	Mr. Vikas Shrivastava, PL
For Res.No.2	:	Mr. Ramakant Mishra, Assistant Solicitor General

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

17/02/2021

1. The challenge in the present writ petition is to the order dated 16.12.2020
whereby the respondent no.5 had passed an order of recovery against the
petitioner to the tune of Rs. 1,92,286/-

2. The said amount of recovery is alleging excess payment paid to the petitioner for a period between 01.01.1996 till date of retirement i.e. 30.04.2020. It is said that in course of implementation of 5th Pay Commission from 01.01.1996 the petitioner seems to have been given some erroneous fixation and which could be detected only after retirement of the petitioner and thereafter the impugned order has been passed.
3. Counsel for the petitioner submits that firstly the petitioner is a low paid Class-III employee who stood retired from the post of Dresser in the health department under the respondents. Secondly, the alleged excess payment is said to have been made about 24 years prior to the date of retirement of the petitioner and thirdly the petitioner is a retired employee and for all these grounds the order of recovery of the department was bad in law as Supreme Court in the case of ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.***” reported in ***2015 AIR SCW 501*** has clearly held that under these circumstances it is impermissible under law.
4. State counsel on the other hand opposing the petition submits that erroneous fixation of pay granted to the petitioner could be detected only after petitioner is retired from service while his retiral dues were being settled and the moment it was detected the department has taken rectification of the same and has initiated recovery.
5. Having heard the contentions put forth on either side and on perusal of records, it is relevant to take note of the fact that petitioner was a low paid employee who stood retired w.e.f. 30.04.2020. Till the date of retirement there has been no detection on the part of the respondents so far as any illegal or excess payment made to the petitioner. It is after retirement that notice of recovery has been issued. The notice of recovery shows that excess payment is said to have arisen on account of wrong fixation given

to the petitioner. It is also not a case of the respondents that the said excess payment has been received by the petitioner on account of any misrepresentation or fraud played by him but was on account of the error on the part of the officials under the respondents.

6. 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."

7. 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).
8. Given the said facts and circumstances of the case and taking into consideration the situations which have been laid down by the Supreme

Court in the case of Rafiq Masih(Supra) it clearly reflects that present case is one which would squarely fall under the situations reflected in the said judgment and hence the recovery of the amount becomes impermissible under law. The impugned order of recovery therefore is unsustainable and deserves to be and is accordingly set aside. It is however made clear that interference by this Court is only to the extent of recovery being made, the department would be at liberty to carry out rectification part without any recovery being made.

9. The writ petition accordingly stands partly allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit