

HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION (SERVICE) NO. 2260 OF 2021

- Dr. Ram Dayal Koreti, S/o Shri G.R. Koreti, aged about 63 years, By Occupation Senior Medical Officer, Community Health Center, Charama, District U.B. Kanker (CG) **... Petitioner**

versus

1. The State of Chhattisgarh, through its Secretary, Health and Welfare Department, Mantralaya, Naya Raipur, District Raipur (CG)
2. The Director, Health Services, Mantaralaya, Naya Raipur, District Raipur (CG)
3. Chief Medical and Health Officer, Kanker, District Uttar Bastar Kanker (CG)
4. Joint Director, Funds, Account and Pension, Baster Division, Jagdalpur, District Bastar (CG)
5. District Treasury Officer, Kanker (CG) **... Respondents**

For Petitioner	:	Mr. Parag Kotecha, Advocate.
For Respondents/State	:	Mr. Rahul Jha, Dy. G.A.

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

06/04/2021

1. Challenge in the present Writ Petition is to the two orders of recovery, i.e., Annexure P-1, dated 4.7.2019 and Annexure P-2, dated 19.9.2019.
2. Vide the impugned orders, the Respondents have ordered for recovery of an amount of Rs.11,69,362/- paid in excess to Petitioner which he otherwise was not entitled for and it has been ordered for recovering the said amount on a monthly installment of Rs.29,234/- from the salary payable to the petitioner, till the entire amount is recovered.
3. Challenge to the impugned orders firstly is on the ground that the alleged excess payment, if at all if any paid to Petitioner, was not on account of any misrepresentation or fraud played by Petitioner but because of the error on the part of Respondents who have wrongly paid the amount to Petitioner. The second ground is that the alleged excess payment was made beyond a period of 5 years

from the date of issuance of recovery order and therefore it becomes impermissible under law in the light of the judgment of the Hon'ble Supreme Court rendered in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. (2015 AIR SCW 501)**. Further challenge is on the ground that abruptly the impugned order have been passed in contravention to the basic principles of natural justice inasmuch as no opportunity of hearing has been given to Petitioner to defend the recovery proceeding initiated by Respondents and therefore on this ground also the impugned orders deserve to be set aside/quashed.

4. Learned State Counsel on the other hand submits that it is a case where the judgment of *Rafiq Masih (supra)* relied upon by Petitioner would not be applicable, for the reason that Petitioner is a Class-I Gazetted post holder and therefore he cannot be brought under the ambit of low paid employee. According to learned State Counsel, the Petitioner is still in service and he has got some more years of service left before his retirement and it has been recently detected that on the revision of pay being implemented in the year 2009, the Petitioner has been erroneously given certain excess payment on account of wrong fixation to the tune of Rs.11,69,362/-.

5. Learned State Counsel referring to Annexure P-2, dated 19.9.2019, submits that the order of recovery has been issued after a due enquiry, conducted at the level of Joint Director, Treasury, Accounts & Pension and therefore there does not seem to be any error on the part of Respondents in initiating the recovery proceeding. Learned State Counsel also submits that the impugned orders of recovery are one which were passed by Respondents in July, 2019 and September, 2019 respectively and the present Writ Petition now has been filed by Petitioner as late as in March, 2021 and for all this period of more than about 1½ years the Petitioner was not aggrieved by the said orders and the action of recovery and he permitted the Respondents to proceed further with the recovery proceeding and therefore he should be estopped to challenge the same now at this belated stage.

6. Having heard the contentions put forth on either side and on perusal of record, admittedly the Petitioner is working on the post of Senior Medical Officer and is a Selection Grade officer and the Petitioner is a Class-I Gazetted post holder . He seems to have been granted the wrong fixation of pay in the implementation of Revision of Pay Rules, 2009, which was detected only in July, 2019 and it was ordered for recovering of an amount of Rs.11,69,362/- from the salary of Petitioner.

7. Undoubtedly, the Petitioner did not question the impugned orders for pretty long time and permitted the Respondents to carry out with the recovery proceeding and a considerable amount of almost Rs.4 Lakh has also been permitted to be recovered by Respondents. The present Writ Petition now has been filed as late as in March, 2021 and the impugned orders were passed in July, 2019 and September, 2019. In the entire Writ Petition, the Petitioner's stand is not that the recovery orders are bad for the reason that he has not been paid any excess payment but has been paid rightfully that which he was entitled for.

8. The contention of Petitioner is that even if it is an excess payment, the same has been paid to Petitioner not for any fault of his but on account of the error and mistake on the part of Respondents and since the payment has been made quite a long time ago it becomes impermissible under the law now. Further ground of challenge is also that before passing the impugned order and before initiating recovery proceeding, the Respondents have not granted an opportunity of hearing to Petitioner.

9. As regards the first contention of Petitioner not being at fault in receiving the excess payment and in fact that the recovery proceeding is being made in respect of erroneous payment which was originally paid more than 5 years back, this Court is of the opinion that it is not a case where Petitioner has retired from service. It is also not a case where Petitioner is a low paid employee. As has been stated in the preceding paragraphs, the Petitioner is a Class-I Gazetted rank employee receiving Selection Grade pay scale. Therefore those grounds raised may not be sustainable.

The only ground of Petitioner which is appealing to this Court is that since the quantum of amount allegedly paid in excess to Petitioner is a huge amount of more than Rs.11,69,362/-, the least that the Authorities should have done was that, to at least grant the Petitioner an opportunity of hearing both in respect of alleged wrong fixation and also in respect of recovery proceeding which the Respondents intended.

10. It is by now a well settled proposition of law that any action on the part of employer or, for that matter the State, which has adverse civil consequence, the principles of nature justice have to be mandatorily followed. In the instant case, the adverse civil consequence is to the extent of recovering of an amount of almost Rs.30,000/- per month from the monthly salary of Petitioner. For the said reason, the Respondents ought to have at least granted an opportunity of hearing to Petitioner before taking a decision of recovery.

11. Now, when the impugned orders have already been acted upon and have been brought into force for a period of almost 1½ years, this Court at this juncture would not like to interfere with the same. However, this Court is inclined to direct the Respondent authorities to forthwith issue an appropriate letter seeking an explanation of Petitioner in respect of both alleged wrong fixation as also the action of recovery and grant a reasonable time to Petitioner to respond to the same and thereafter within a period of 60 days from the date of receipt of response of Petitioner, the Respondents should take a decision reaching to the conclusion as to whether the action on the part of Respondents is proper, legal and justified or not.

12. For the said purpose, the Respondents are directed to take appropriate steps and issue appropriate letter calling explanation from Petitioner within a period of 45 days from today and the further proceedings be concluded within a further period of 60 days from the date the Petitioner submits his response.

13. It is made clear that any decision of Respondents would still be subjected to challenge by Petitioner.

14. It is expected that Respondents shall also take appropriate remedial measure in refunding the amount recovered incase if the authorities reach to the conclusion that he has not been paid any excess amount.

15. With the aforesaid observations, the Writ Petition stands disposed of.

sbarad

**Sd/-
(P. Sam Koshy)
JUDGE**