

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 2295 of 2021

1. Mohan Lal Kosle S/o Sunhar Das Kosle Aged About 62 Years R/o Vikas Nagar, Kota Road, Gudiyari Raipur, Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secreatry, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, District- Raipur, Chhattisgarh
2. The Joint Director, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, District- Raipur, Chhattisgarh.
3. The Chief Medical And Health Officer, District Raipur Chhattisgarh, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, District- Raipur, Chhattisgarh.
4. The Director, Government Leprosy Hospital, Pandri, Raipur Chhattisgarh
5. The Director, Treasury Accounts And Pension Indrawati Bhawan, Atal Nagar, Raipur, Chhattisgarh District- Raipur, Chhattisgarh
6. The Joint Director, Treasury Accounts and Pension, Raipur, Chhattisgarh District Raipur Chhattisgarh.

---Respondents

For Petitioner	:	Ms. Juhi Jaiswal, Advocate.
For Respondent/State	:	Shri Sudeep Verma, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12.04.2021

1. Aggrieved of the order dated 12.02.2021 the present writ petition has been filed. Vide the impugned order the respondents have ordered the petitioner to pay an amount of Rs.7,49,370/- towards alleged excess payment received by the petitioner while in service. According to respondents, unless the said payment is deposited, the retiral dues including the pensionary benefits cannot be finalized. It is this order which has led to the filing of the present writ petition.
2. The contention of the petitioner is that he was working under the respondents as Pharmacist Grade-II. The petitioner on attaining the age of superannuation retired from service w.e.f. 31.01.2021. After the petitioner has retired, the respondents in the month of February, 2021 has issued the impugned order showing recovery to be made from the petitioner to the

tune of Rs.7,49,370/-. The said alleged excess payment is said to have been erroneously granted to the petitioner during the period April, 2006 to December, 2020. It is further contended by the petitioner that pursuant to Annexure P/1 the entire retiral dues of the petitioner and also the pensionary benefits payable to the petitioner has been withheld by the authorities concerned.

3. According to the petitioner since he has retired from the post of Pharmacist Grade-II which is a Class-III cadre post and that the alleged excess payment has been made almost about 14 years prior to the retirement of the petitioner from service, the said amount cannot be recovered by the respondents even if it has been wrongly paid. Further contention of the petitioner is that it is not a case of the respondents where the petitioner has received the alleged excess payment on account of any fraud, misrepresentation or any illegal act on the part of the petitioner. Rather, it is a case where even if it is an alleged excess payment, the same has been on account of the error on the part of the officers of the respondents and for which the petitioner should not be held responsible or recovery should be made which otherwise can create great hardship and inconvenience to the petitioner particularly after retirement. Moreover, it is also the contention that the impugned order has been passed without affording any opportunity of hearing and therefore also the impugned order of recovery is bad in law as it is in violation of basic principles of natural justice.
4. The State counsel, on the other hand opposing the petition submits that since the petitioner had retired in January, 2021 and on his retirement the petitioner has given an undertaking for recovery of any excess payment made, the action of the respondents cannot be interfered with. Moreover, the State counsel submits that it is a case where admittedly the petitioner

has been paid something in excess of what he was otherwise legally entitled for. It is also the contention of the respondents that the alleged excess payment seems to have been paid on account of certain erroneous fixation of pay and there is an undertaking obtained by the employer for recovering anything which has been paid in excess to the employee concerned and on that ground also the impugned order warrants interference.

5. Having heard the contentions put forth on either side and on perusal of records admittedly the petitioner was working as a Pharmacist Grade-II which is a Class-III Cadre post. He retired from service w.e.f. 31.01.2021. Till his date of retirement there was no order of recovery whatsoever pending against him under the respondents. The impugned order for the first time has been issued after the retirement of the petitioner that too without affording any opportunity of hearing to the petitioner in respect of alleged excess payment. The alleged excess payment appears to have been made for the first time in April, 2006 i.e. about 14 years prior to the date of retirement.
6. Under the aforesaid factual matrix of the case, it would be relevant for taking note of the judgment of the Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334 wherein the Supreme Court has given various situations under which the recovery is held to be impermissible. For ready reference, the relevant paragraph is reproduced hereinunder:

“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 herein above, 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."

7. On going through the facts of the present case it clearly reflects that the case of the petitioner squarely meets most of the situations mentioned in the judgment of the Supreme Court wherein the recovery has been held to be impermissible under the law. Thus, the case of the petitioner is squarely covered by the said judgment and the impugned order would not be sustainable under the eye of law keeping in view the aforesaid judgment of Supreme Court in Rafiq Masih (Supra). The impugned order of recovery therefore deserves to be and is hereby set aside.
8. It is made clear that interference of this court is only to the extent of order of recovery which has been initiated by the respondents. This by itself would not mean that the State cannot carry out rectification of any error in the fixation of pay that has occurred in the course of settlement of retiral dues and pensionary benefits. Of course such action also has to be following the basic principles of natural justice whereby at least an explanation be called upon from the petitioner as to why the fixation which

has been wrongly given be not recovered by the State if the same has been erroneously paid.

9. Accordingly, reserving the right of the State for carry out the rectification after following the basic principles of natural justice, the writ petition at this juncture stands allowed to the extent of quashing of the order of recovery. The respondents are directed to immediately ensure that retiral dues of the petitioner including pensionary benefits is settled at the earliest keeping in view the observations made by this court in the preceding paragraphs.
10. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder