

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2192 of 2020**

1. Smt. Sanyogita Mishra W/o Sarit Kumar Mishra Aged About 61 Years R/o H.No.36/167, Near Lakhe School, Gandhi Chowk, Chota Para, Raipur, Chhattisgarh
---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhavan, Atal Nagar, Raipur, Chhattisgarh.
2. Principal Secretary Department Of Finance, Mahanadi Bhavan, Atal Nagar, Raipur, Chhattisgarh.
3. Joint Director And Superintendent Dr. Bhim Rao Ambedkar Memorial Hospital Raipur, Chhattisgarh.
4. The Joint Director Treasury Accounts And Pension, Raipur, Chhattisgarh.
5. Drawing And Disbursement Officer Local Office, Dr. Bhim Rao Ambedkar Memorial Hospital Raipur, Chhattisgarh.
---- **Respondents**

For Petitioner	:	Mr. Akash Kumar Kundu, Advocate
For State	:	Smt Binu Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05.10.2021**

1. Aggrieved by the impugned order Annexure P/1 dated 22.04.2020, the present writ petition has been filed.
2. Vide the impugned order, the respondent No. 3 has ordered for recovery of an amount of Rs. 2,95,841/- from the retiral dues payable to the petitioner. The contention of the petitioner is that the respondents have already adjusted Rs. 23,868/- from the arrears of salary which was payable to the petitioner.

3. The facts of the case in brief are that the petitioner was working under the respondents as a Nursing Sister and in due course of time she got promoted as an Assistant Nursing Superintendent, on which post she stands retired on 31.04.2021. Just before a year or so the petitioner was issued with an order of recovery dated 22.04.2020 ordering for recovery of an amount of Rs.2,95,841/-. The said recovery was said to be on account of a wrong fixation given to the petitioner in the year 2010 onward.
4. The contention of the petitioner is that, firstly the order of recovery is bad in law as the same has been issued after retirement, thus, is impermissible. He further submits that the petitioner at no point of time is held responsible for the alleged excess payment. The alleged excess payment was first time paid to the petitioner roughly more than 10 years before his retirement and before the order of recovery was issued. The said order of recovery is in violation of the judgment of Supreme Court in the case of State of Punjab Vs. Rafiq Maish, 2015 (4)SCC 334.
5. State counsel, however, opposing the petition submits that it is a case where admittedly the petitioner has been paid something extra which otherwise he was not entitled for. According to the respondents, immediately on the respondents detecting the excess payments made to the petitioner, they have issued the order of recovery. Further, since the writ petition has been filed after more than three years, the same should be rejected on the ground of delay and laches.
6. Having heard the contentions put forth on either side and on perusal of the record, admittedly the petitioner was a class-III post holder. The

order of recovery has been issued post retirement. Erroneous payment was paid first time to the petitioner more than 10 years prior to her retirement. The petitioner, at no point of time is held responsible for the alleged excess payment, if any, received by her.

7. Given the aforesaid facts, it would be relevant at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of Rafiq Masih (supra) wherein it has been very emphatically held by the Supreme Court that in the given situations, the recovery would be impermissible under law. Some of the situations in the said judgment of Rafiq Masih (supra) are reproduced hereinunder:

- (1) Recovery from employees belonging to Class-III 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 has 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 employee's right to recover."

8. Taking into consideration the aforesaid situations and comparing the same with the facts of the present case, this Court is of the opinion that the case of the petitioner stands squarely covered by the judgment of the Supreme Court in the case of Rafiq Masih (supra). Thus, the impugned order of recovery Annexure P-1 dated 22.04.2020 is not sustainable and the same deserves to be and is accordingly set aside/quashed.
9. As has been informed by the petitioner, before this Court had granted the interim protection on 09.07.2020, the respondents have recovered

one installment from the dues payable to the petitioner and also an amount of Rs. 23,868/- from the arrears payable to the petitioner, however the balance amount by virtue of the interim protection has not been recovered.

10. In view of the same and the legal position as it stands, the impugned order Annexure P/1 deserves to be and is accordingly set aside. The order of recovery is quashed. The respondents are directed to immediately refund the amount which has already been recovered/adjusted from the dues payable to the petitioner forthwith within an outer limit of 60 days.

11. It is made clear that the interference of this Court is only to the extent of the recovery part, the respondents/State would be entitled to make all necessary rectification in-respect-of the erroneous fixation of pay is concerned.

12. The present writ petition accordingly stands allowed and disposed of.

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