

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 4621 of 2021

1. Smt. Asha Dubey, W/o Kodu Ram, Aged About 63 Years R/o Village Bhanura, Main Road Balrampur, District - Balrampur - Ramanujganj, Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh, Through Secretary, Department of Health and Family Welfare, Mahanadi Bhawan, Naya Raipur, District - Raipur, Chhattisgarh.
2. Divisional Joint Director, Kosh Lekha And Pension, Surguja Division, Ambikapur, District Surguja, Chhattisgarh.
3. Project Officer, Ekikrit Bal Vikas Pariyojna, District Balrampur - Ramanujganj, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Shakti Raj Sinha, Advocate.
For State	:	Shri Ishan Verma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02.09.2021.

1. Challenge in the present writ petition is to the order of recovery dated 23.07.2021. Vide the said order the authorities have issued an order of recovery against the petitioner for an amount of Rs.1,12,764/-. The alleged recovery has been made on the ground that while the petitioner was in service she has been granted excess payment on account of wrong fixation made during the period 01.07.2007 to 31.03.2021.
2. The contention of the petitioner is that there is no such misrepresentation made by the petitioner at any point of time nor is there allegation of any fraud played by the petitioner in getting the alleged excess payment or wrong fixation of pay. He further submits that it is a case where order of recovery has been issued after her retirement. It is also the contention of the petitioner that even otherwise since the alleged excess payment for the first time was paid on 01.07.2007 and the petitioner stood retired from service on 31.03.2021, it stands established that first wrong fixation of pay

was made about 13-14 years prior to retirement. The counsel for the petitioner relied upon judgment of Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334.

3. The State counsel on the other hand contended that since at the time of settlement of the retiral dues it was found that the petitioner had been wrongly granted excess payment which she was otherwise not entitled for and therefore this excess money paid to the petitioner on account of wrong fixation of pay has been ordered to be recovered from the dues payable to the petitioner. The same thus cannot be said to be bad in law. He further submits that even otherwise at the time of retirement an employee/officer has to give an undertaking in respect of recovery of any excess payment made, and in the instant case also the petitioner must have definitely given an undertaking and on that basis also the recovery cannot be held to be bad in law.
4. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to take note of decision of the Supreme Court in case of Rafiq Masih (Supra) wherein in paragraph 18 the Supreme Court has laid down certain situations under which the recovery becomes impermissible under the law. For ready reference para 18 of the said judgment is being 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."

5. 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.
6. As regards the contention of the State that there is an undertaking given by the petitioner at the time of retirement is concerned, this court is of the opinion that the said undertaking firstly would be applicable in respect of any erroneous payment made to the petitioner by way of retiral dues or pensionary benefits. The said undertaking cannot be stressed to the extent of recovering an allegedly excess payment made long back while the employee was in service and for which the employee was not directly or indirectly responsible for receiving the same that to if at all wrongly paid.
7. As regards the alleged excess payment made long back while the employee was in service, the authorities would always have liberty to carry out the rectification part, but the excess payment so paid cannot be

recovered in the light of the judgment of Supreme Court rendered in Rafiq Masih (Supra).

- 8.** For the aforesaid reasons, the writ petition at this juncture stands allowed. The impugned order of recovery is held to be bad in law. The same deserves to be and is hereby set aside/quashed.

Sd/-
(P. Sam Koshy)
Judge

inder