

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 4642 of 2021

1. Bhaiya Ram Goti S/o Late Siyaram Goti Aged About 65 Years Retired Assistant Engineer /sdo, Water Resources Department, Posted In The Office Of Executive Engineer Water Resources Survey And Barrage Construction Division No. 2, Champa District Janjgir Champa Chhattisgarh R/o C/o Ram Gopal Devangan, Qr. No. A/4, Sai Vatika Colony Devpuri Raipur District Raipur Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, Department of Water Resources, Mahanadi Bhawan, New Mantralaya, Raipur Chhattisgarh
2. Engineer In Chief Water Resources Department, Mahanadi Bhawan, New Mantralaya, Raipur Chhattisgarh
3. Executive Engineer Water Resources Survey and Barrage Construction Division No. 02, Champa District Janjgir Champa Chhattisgarh
4. Division Joint Director Treasury, Account And Pension, Bilaspur Division District Bilaspur Chhattisgarh

---Respondents

For Petitioner	:	Shri F S Khare, Advocate.
For State	:	Ms. Abhyunnati Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03.09.2021.

1. Aggrieved by the order dated 30.06.2021 the present writ petition has been filed. Vide the impugned order the respondents have ordered for recovering of an amount of Rs.4,17,267/-and the said amount has already been recovered by adjusting the said amount from the gratuity amount payable to the petitioner on his retirement as is evident from Annexure P/2 dated 24.07.2021.
2. The contention of the petitioner is that he was working on the post of Assistant Engineer under the respondents and on attaining the age of superannuation the petitioner got retired w.e.f. 30.06.2018. Subsequent to his retirement the petitioner has only been recently after more than three years being released with the gratuity amount payable to him as would be evident from Annexure P/2 dated 24.07.2021. However, while releasing

the gratuity amount it is reflected that the department has recovered an amount of Rs.4,17,267/- from the total gratuity amount payable to the petitioner. It was then, that the petitioner came to know that the respondents had issued an order on 30.06.2021, Annexure P/1 holding that there is an alleged excess payment made to the petitioner for the period between 25.02.2004 to 30.06.2018 amounting to Rs.4,17,267/-and which has been ordered to be recovered.

- 3.** The contention of the petitioner is that there is no allegation of any misrepresentation or fraud played by the petitioner in the obtaining of the said amount of excess payment. It is also the contention of the petitioner that the first alleged payment has been made almost 14 years prior to petitioner having retired and about 17 years before the order of recovery was passed. The counsel for the petitioner relied upon judgment of Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334.
- 4.** 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 extra increment which 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.

5. 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.”

6. 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.

7. 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.
8. 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).
9. 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. The respondents are directed to ensure that the amount recovered should be refunded back to the petitioner forthwith within a period of 60 days from the date of receipt of copy of this order.
10. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge