

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5274 of 2021

1. Rajendra Kumar Sharma S/o Late Shri D.P. Sharma Aged About 63 Years R/o Q.No. 74, Gitanjali Park, Mangla Bilaspur District Bilaspur Chhattisgarh
2. Smt. Sunita Dhariya W/o Shri S.K. Dhariya Aged About 62 Years R/o Near Satbahaniya Mandir, Old Power House Devrikhud, Bilaspur District Bilaspur Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Finance Department Mahanadi Bhawan, Mantralaya, Atal Nagar, District Raipur Chhattisgarh
2. Secretary Department Of Home (Police), Mahanadi Bhawan, Mantralaya, Atal Nagar District Raipur Chhattisgarh
3. Director General Of Police Police Headquarters, Block No. 4, Sector 19, Near Indrawati Bhawan, Atal Nagar, District Raipur Chhattisgarh
4. Superintendent Of Police Bilaspur, District Bilaspur Chhattisgarh
5. Joint Director (Treasury, Accounts And Pension) Bilaspur Division, District Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Ms. Naushina Ali, Advocate.
For State	:	Mr. Kunal Das, PL

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/09/2021

1. The present writ petition has been filed by the two petitioners from whose retiral dues the respondent no.5 has made certain deductions and from the gratuity amount payable to the petitioners. The petitioner no.1 was working on the post of Subedar(M) w.e.f. 30.11.2019 and petitioner no.2 retired from service on 30.10.2020.
2. In the course of settlement of their post retiral benefits, the respondent no.5 recovered an amount of Rs. 84,702/- from the petitioner no.1 and an amount of Rs. 29,866/- from petitioner no.2, except for the order Annexure P-1 which reflects recovery being made to in respect of the aforesaid

amount, there is no further details available as to under what head the deduction is being made and as to when the alleged excess payment was made to the petitioners and also as to whether the said excess payment was paid to the petitioners on account of fraud or misrepresentation made by the petitioners. The department has straight away carried out deduction from the retiral dues payable to the petitioners without issuance of any show cause notice or any opportunity of explanation being provided to the petitioners.

3. Contention of the petitioners is that the action on the part of the respondents in so far as initiating the recovery proceedings after retirement is otherwise impermissible under law in the light of the judgment of the Supreme Court in the case of ***“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”*** reported in ***2015 AIR SCW 501***.
4. State counsel on the other hand opposing the petition submits that it is only at the time of settlement of post retiral dues that department has come to know that there has been certain excess payment made to the petitioners. Therefore, when the respondents have detected the defect in respect of the excess payment they have taken remedial steps for recovering the excess payment and therefore it cannot be said to be bad in law.
5. Having heard the contentions put forth on either side and on perusal of records, admittedly the two petitioners have retired from service w.e.f. 30.11.2019 & 30.10.2020 respectively. The action of recovery has been done straightaway from the retiral dues without there being any formal order of recovery being issued by the department. The two petitioners herein admittedly were working as a Class-III and Class-IV employees under the respondents. There is no allegation of any misrepresentation or

fraud played by the petitioners for the purpose of obtaining the alleged excess payment.

6. At this juncture it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***"State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc."*** reported in ***2015 AIR SCW 501***. The Hon'ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery is totally impermissible under law. The situations as envisaged in the said judgment are as under :

- "(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. In the said paragraph, the decision of the Supreme Court has laid down certain situations under which the recoveries would be totally impermissible under law. One of those situations envisaged is when recoveries have been proposed against the retired employees. The other situations being the recovery being made from the low paid Class-III and Class-IV employees. It is also held by the Hon'ble Supreme Court in the event of the alleged excess payment having been made prior to 5 years

from the date of recovery being made in that event also the recovery would be impermissible.

8. From the given aforesaid matrix of the present case, it appears that case of the two petitioners squarely fits in the situations provided by the Hon'ble Supreme Court. In view of the same the action on the part of the respondents is bad in law to the extent of making recoveries from the gratuity amount payable to the petitioner. The impugned orders Annexure P-1 in respect of both the petitioners to the extent of making recoveries from the gratuity is held to be bad in law. Respondents are directed to immediately refund the said amount deducted from the petitioners i.e. the amount of Rs. 84,702/- and an amount of Rs. 29,866/- from the petitioner no.1 and petitioner no.2 respectively at the earliest preferably within a period of 60 days from the date of receipt of copy of this order.
9. With the aforesaid observations, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit