

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5321 of 2021**

Umesh Kumar Tiwari S/o Late Shri Sudama Prasad Tiwari, Aged About 59 years, R/o C-20, Rajasv Colony, Sarkanda, Bilaspur, P.S. Sarkanda, Tahsil And District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of Home/ Police, Mahanadi Bhawan, Mantralay, Police Station And Post Rakhi, Atal Nagar, New Raipur, District Raipur, Chhattisgarh
2. Inspector General Of Police, O/o. Inspector General Of Police, Bilaspur Range, Near Nehru Chowk, Bilaspur, District Bilaspur, Chhattisgarh
3. Divisional Joint Director, O/o. Divisional Joint Director, Treasury Account And Pension, Bilaspur, District Bilaspur, Chhattisgarh
4. Superintendent Of Police (SP), O/o. Superintendent Of Police, Bilaspur, District Bilaspur, Chhattisgarh

----Respondents

For Petitioner	:	Shri Abhishek Pandey along with Ms. Laxmeen Kashyap, Advocates.
For Respondent	:	Shri Kunal Das, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****29.09.2021**

1. Aggrieved by the impugned order Annexure P/1 dated 19.07.2021, the present writ petition has been filed. Vide the said order, the respondents have ordered for recovery of an amount Rs. 2,36,301/- from the gratuity amount payable to petitioner.
2. The facts in brief, are that the petitioner in the present writ petition was

working as a Head Constable under the respondents. The petitioner stood retired from service on attaining the age of superannuation on 28.02.2021. The petitioner has taken voluntarily retirement from service. Subsequent to the petitioner having retired, the respondents have now issued the impugned order whereby they have ordered for recovery of an amount of Rs. 2,36,301/- from the retiral dues of petitioner.

3. The decision for recovery is on the ground that while the petitioner was in service, he was granted certain erroneous fixation on account of which the petitioner had received excess amount which he was otherwise under service rules not entitled for. The contention of the petitioner assailing the action of recovery is that the decision of recovery of the said amount is per se bad-in-law in the light of the judgment of the Hon'ble Supreme Court in the case of "***State of Punjab and Ors. etc. v. Rafiq Masih (White Washer) etc.*** [2015 AIR SCW 501]", where such recoveries have been clearly held to be impermissible under law.
4. The further submission of petitioner is that it is not the contention of the respondents/State that the erroneous or the excess amount received by the petitioner was on account of any misrepresentation or fraud paid by the petitioner. It is also the contention that the alleged excess amount has been paid to petitioner on account of an error on the part of the respondents because he is not responsible in any manner. Thus the action of recovery according to the petitioner deserves to be quashed.
5. The State counsel, on the other hand, submits that upon the petitioner retiring from service on 28.02.2021, in the course of settlement of dues

it was detected that the petitioner has been given wrong fixation of pay and this excess payment comes to Rs. 2,36,301/- which now while settling the retiral dues has been adjusted by the authorities. According to the State counsel, since the petitioner has received something which he is not legally entitled for, the respondents are entitled for recovering the excess amount so paid from the dues payable to petitioner.

6. Given the facts and circumstances of the case, it would be relevant at this juncture to take note of the judgment of the Supreme Court in case of Rafiq Masih (Supra) wherein in paragraph 18 the Supreme Court has clearly held certain situations under which it has been specifically held that recoveries would become impermissible. For ready reference the operative part of the said judgment is reproduced herein under:-

“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. A plain perusal of the aforesaid judgment of the Supreme Court if we consider the factual matrix of the present case, it would reveal that most of the situations envisaged in the said judgment which make recovery impermissible are also available in the case of the petitioner in hand. The petitioner indisputably was employed as Class-III at the time of his retirement. He retired a few months back before the order of recovery was passed. The petitioner is not at fault for the alleged receipt of excess payment.
8. Given the aforesaid facts and circumstances of the case, the impugned order to that extent is not sustainable and the same deserves to be and is hereby set aside/quashed. The respondents are directed to immediately refund the entire amount recovered or adjusted from his retiral dues i.e. an amount of Rs.2,36,301/- as per Annexure P/1 dated 19.07.2021.
9. However, in case it is found that the alleged excess payment made to the petitioner is in respect of the post retiral benefits, the respondents would be at liberty to issue a show-cause notice to the petitioner in respect of the alleged excess payment and initiate appropriate proceedings thereafter. This in other words means if it is a case of excess payment made long ago while the petitioner was in service, any further proceedings would not be permissible.
10. In view of quashing of the impugned order Annexure P/1 dated 19.07.2021, the respondents are directed to ensure that the entire retiral dues payable to petitioner is processed and settled at the earliest preferably within a period of 90 days from the date of receipt of copy of this order.

11. The writ petition accordingly stands allowed and disposed of in terms of the observations made in the preceding paragraphs.

Sd/-

**P. Sam Koshy
Judge**

Khatai