

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5513 of 2018**

Smt. Shobha Walia W/o Late Ranjan Walia, Aged About 60 Years R/o Flat No. 41, Kusha Bhau Thakre Apartment, New Rajendra Nagar, Group No. 4, Raipur, District Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Department Of Forest, Mantralaya Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
2. Principal Chief Conservator Of Forest, Raipur Office Of Principal Chief Conservator Of Forest, Aranya Bhawan, Sector - 19, Naya Raipur, District Raipur Chhattisgarh.
3. Additional Principal Chief Conservator Of Forest (Ad/ng), Office Of Principal Chief Conservator Of Forest, Aranya Bhawan, Sector - 19, Naya Raipur, District Raipur Chhattisgarh.
4. Divisional Forest Officer, Karya Ayojana Vanmandal, Raipur Chhattisgarh.
5. Divisional Joint Director Treasury Accounts And Pension, Raipur Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Abhishek Pandey, Advocate
For State	:	Ms. Akanksha Jain, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/01/2021**

1. The challenge in the present writ petition is to the order Annexure P/2 dated 01.09.2017, whereby the respondents have initiated a recovery proceeding to the tune of Rs. 88,890/- to be recovered in 30 installments. The petitioner is also challenging the order Annexure P/1 dated 12.07.2018 whereby the respondents had rejected the representation of the petitioner and have ordered for

recovering the aforesaid amount in an installment of 20 considering the short a duration for the petitioner to retire.

2. The facts of the case is that the petitioner was working as an Assistant Grade-I under the respondents. After having worked in the Department for almost 26 years of service, the petitioner retired from service w.e.f. 30.04.2020. Immediately before the retirement of the petitioner, she was served with an impugned notice of recovery Annexure P/2 dated 01.09.2017, whereby it was found that on 28.05.2009 in the course of implementing the benefit of revision of pay w.e.f. 01.01.2006 the petitioner has been given an erroneous fixation and in the course the petitioner has been paid an excess amount of Rs.88,890/- which has to be recovered and it was ordered for recovering the same in 30 installments. The petitioner immediately thereafter approached the authorities concerned by way of a representation. The authorities had in the process of deciding the representation stayed the recovery proceedings and finally vide Annexure P/1 rejected the same affirming that the amount has to be recovered however the installments has been reduced from 30 to 20 vide Annexure P/1 dated 12.07.2018. The contention of the petitioner is that the petitioner has been paid the said alleged erroneous amount not on account of any misrepresentation or fault or any act on the part of the petitioner, but the same has been paid on account of the error if at all on the part of the respondents.
3. The second contention of the petitioner is that the authorities before issuing the impugned order of recovery had never given an

opportunity of hearing to the petitioner which again would vitiate the order for the same to be in violation of the principles of natural justice. The further contention of the petitioner is that the impugned order of recovery is also per se illegal keeping in view 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 (4) SCC 334**”.

4. The further ground raised by the counsel for the petitioner is that the case of the petitioner gets attracted from all the situations that are reflected in the judgment of 'Rafiq Masih' in as much as the petitioner is a Low Paid Class-III employee and that the alleged erroneous payment was made about 12 years prior to the date of issuance of impugned order of recovery and at that point of time the petitioner had a short period of service left for retirement.
5. Opposing the petition the learned counsel for the State submits that it is a case where at the time of enforcement of the revision of pay w.e.f. 28.05.2009 an affidavit was obtained from the petitioner and where the petitioner had already given affidavit on 30.04.2009, whereby she had categorically accepted the fact that in the event if the authorities found any error in fixation of pay, the excess amount if any can be recovered.
6. The counsel for the State relied upon the judgment of the Hon'ble Supreme Court in the case of “**High Court of Punjab and Haryana & others v. Jagdev Singh**” **2016(14) SCC 267** saying that when any erroneous revision of pay has occurred and where there is an undertaking given by the employee, the employer has a

right to recover the same and thus the action on the part of the respondents in initiating the recovery proceedings in the present case cannot be said to be bad in law.

7. It was the further contention of the petitioner that even the Division Bench of this High Court in the case of “**State of Chhattisgarh & Others v. Pramila Mandavi**” in **W.A. No. 376/2019** had followed the judgment of the Hon'ble Supreme Court in the case of 'Jagdev Singh' (supra) and had allowed the writ petition setting aside the order passed by the Single Bench quashing an order of recovery under similar circumstances.
8. Having heard the contentions put forth on either side and on perusal of record, the admitted factual position from the pleadings as is evident is that the petitioner was working under the respondents as a class-III cadre post of Assistant Grade-I. The petitioner was to retire from service on 30.04.2020. Just about 2 ½ years before the retirement the impugned notice of recovery dated 01.09.2017 was issued. The notice of recovery clearly indicated that the recovery was being made in respect of certain excess payment made to the petitioner on account of erroneous fixation of pay given to the petitioner w.e.f. 01.01.2006 vide order dated 28.05.2009.
9. From the aforesaid factual matrix, it is evident that the order of recovery has been issued after more than 12 years from the date the benefit was extended to the petitioner and in a period less than about 2 ½ years of service left for retirement. It is not a case of the State/respondents that the said excess payment was paid to the

petitioner on account of any misrepresentation or fraud played by the petitioner. The petitioner is not at fault in receiving the same. Whatever was paid by the respondents has been bonafidely accepted by the petitioner and ignorantly has compute the same also. Abruptly after a period of about 12 years, the order of recovery has been issued to the tune of Rs.88,890/-.

10. The question now to be considered is whether the action on the part of the respondents was justified keeping in view the judgment of the Hon'ble Supreme Court both in the case of "Rafiq Masih" (supra) at the first instance and also that of "Jagdev Singh" (supra) at a later stage and also keeping in view the judgment of the Division Bench of this Court in W.A. No. 376/2019. At the first instance this Court would like to point that the claimant in the case of "Jagdev Singh" (supra) before the Hon'ble Supreme Court in the case arising from the "High Court of Punjab and Haryana" as also the respondents in W.A. No. 376/2019 were not persons who were either retired or on the verge of retirement when the impugned action was questioned or the notice of recovery was initiated.
11. Another fact which can be clearly visible is that the impugned notice of recovery in the instant case has been issued after more than a decade i.e. almost after more than 12 years from the date the benefit was extended to the petitioner. All these period, the petitioner bonafidely dispute whatever fixation that was given to the petitioner and also finding the same and at the fag end of service career any recovery made abruptly by the respondent authorities would be iniquitous, harsh and arbitrary, particularly when the

notice of recovery has been issued without affording an opportunity of hearing.

12. Keeping the aforesaid facts, if we take into consideration the judgment of the Hon'ble Supreme Court rendered in the case of "Rafiq Masih" (supra), it would clearly reflect that the Hon'ble Supreme Court while deciding the said judgment had in paragraph No.18 clearly laid down certain situations wherein the recovery by the employer has been declared to be impermissible under law. For ready reference paragraph No.18 of the said judgment is reproduced herein 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.”

13. If we look into the aforementioned situations as has been reflected by the Hon'ble Supreme Court, it would clearly reflect that the case of the petitioner falls practically in all the situations that are reflected therein. Another fact, which has also to be born in mind at this juncture is that pending the writ petition before this Court with an interim order in favour of the petitioner dated 27.08.2018, the petitioner has now retired from service on 30.04.2020. For all the aforesaid reasons, this Court is of the opinion that the judgment of

the Hon'ble Supreme Court in the case of "Rafiq Masih" (supra) would governed the facts and circumstances of the case and would attract the case of the petitioner also so far as the challenge to the impugned order of recovery Annexure P/1 & P/2 are concerned. Accordingly Annexure P/2 & P/1 dated 01.09.2017 and 12.07.2018 are unsustainable and the same deserves to be and is accordingly set-aside/quashed with consequences to follow.

14. In case if any recoveries have been made by the respondents/ Department for the reason that the impugned order has been set-aside, they are directed to forthwith refund the said amount recovered to the petitioner at the earliest preferably within a period of 90 days from the date of receipt of the copy of this order.
15. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved