NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5458 of 2021

Smt. Indra Baghel W/o Late R.P. Baghel, Aged About 62 Years R/o Choudhary Villa, Shubham Vihar Colony, Tahsil And District ICT Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home/ Police, Mahanadi Bhawan, Mantralaya, P.S. Post Rakhi Atal Nagar, New Raipur, District Raipur (Chhattisgarh)
2. Inspector General Of Police (Igp), Office Of Inspector General Of Police, Near Nehru Chowk, Bilaspur, District Bilaspur (Chhattisgarh)
3. Divisional Joint Director, Office Of Divisional Joint Director, Treasury, Account And Pension, Bilaspur, District Bilaspur Chhattisgarh
4. Deputy Superintendent Of Police Office Of Deputy Superintendent Of Police, Range Police, Mt Workshop Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Abhishek Pandey with Ms. Deepika Sannat, Advocate.
For State	:	Mr. Jitendra Pali, Dy. AG

Hon'ble Shri Justice P. Sam Koshy
Order on Board

06/10/2021

1. Aggrieved by the impugned orders Annexure P-1 & P-2 the present writ petition has been filed.

2. Vide the two impugned orders, the respondents have initiated recovery proceedings against the petitioner for recovering an amount of Rs. 4,71,124/- from the retiral dues payable to the petitioner on her retirement.

3. Brief facts of the case is that the petitioner herein was working under the respondents as a Sub Inspector(Ministerial) and who stood retired from

the service on attaining the age of superannuation w.e.f. 31.03.2020. After about nine months from the date of retirement, the respondents have issued an order of recovery against th petitioner stating that for the period between 01.07.2009 to 31.12.2015 and during the 01.01.2016 to 01.07.2019, the petitioner erroneously paid certain excess amount which she was not otherwise entitled for. The excess payment was made on account of erroneous fixation of pay given to the petitioner during the aforementioned period and thereafter the impugned order of recovery have been initiated.

4. Contention of the petitioner is that the action of recovery initiated against the petitioner is otherwise impermissible under law for the reason that firstly the Petitioner has already been retired and secondly the petitioner retired as a Class-III employee and thus she meets all the situations which are upon envisaged by the Hon'ble Supreme Court in the case of **State of Punjab Vs. Rafiq Masih, 2015 (4) SCC 334** which would make the recovery impermissible under law.

5. The State counsel on the other hand submits that upon the petitioner retiring from service on 31.03.2020 in the course of settlement of dues it was detected that the petitioner has been given wrong fixation of pay between 01.07.2009 to 31.12.2015 and during 01.01.2016 to 01.07.2019 and this excess payment comes to Rs.4,71,124/-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 she is not legally entitled for, the respondents are entitled for recovering the excess amount so paid from the dues payable to the 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 aredue 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 makes recovery impermissible is 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 about one year before the order of recovery was passed. The alleged excess payment was made about 11 years before the

date of retirement of the petitioner. The petitioner is not at fault for the alleged receipt of excess payment.

8. Given the aforesaid facts and circumstances of the case, the two impugned orders to that extent is not sustainable, and the same deserves to be and is hereby set aside/quashed. Since the two impugned orders initiated for recovery stands quashed, the Respondents are directed to ensure that the entire post retiral benefits including the pensionary benefits be released to the petitioner without any sort of recovery arising out from the impugned orders Annexure P-1 & Annexure P-2.

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

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Sd/-
(P. Sam Koshy)
Judge

Rohit