

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 5301 of 2020

1. Ashok Kumar Pandey S/o Late Shri Ramji Pandey Aged About 62 Years Retired Assistant Sub Inspector, R/o LIG 547, Deen Dayal Colony, Mangla, Bilaspur, District Bilaspur Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary, Home Affair Department, Mahanadi Bhawan, Mantralaya Raipur Chhattisgarh.
2. Director General of Police Police Head Quarter Raipur District Raipur Chhattisgarh.
3. Inspector General of Police Police Zone Bilaspur , District Bilaspur Chhattisgarh.
4. Superintendent of Police District Bilaspur Chhattisgarh.
5. Joint Director Treasury, Account and Pension Bilaspur Division , District Bilaspur Chhattisgarh.

---Respondents

For Petitioner	:	Shri Manoj Mishra, Advocate.
For State	:	Shri Amit Buxy, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15.01.2021

1. The challenge in the present writ petition is to the notice of recovery dated 19.09.2020 whereby the authorities have initiated recovery of an amount of Rs.2,00,840/- to be recovered from the retiral dues payable to the petitioner.
2. The facts of the case is that, the petitioner working on the post of Assistant Sub Inspector under the respondents retired from service on attaining the age of superannuation on 31.08.2020. Subsequent to the retirement of the petitioner, in the course of deciding release of retiral dues, the respondents have ordered for recovery of aforementioned amount of Rs.2,00,840/- from the retiral dues payable to the petitioner.
3. The contention of the petitioner is that the said amount of excess payment is made to the petitioner on account of an erroneous fixation made by the department which otherwise he was not entitled for. According to the

petitioner, since he is a Class-III category employee and that the entire recovery is being made from the retiral dues of the petitioner, that which is impermissible under law. Further, before issuing recovery notice from the retiral dues the petitioner has never been called upon to give any explanation or any thing as such and for this reason also the order impugned deserves to be interfered with. The petitioner relied upon the judgment of Supreme Court in case of ***State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc. reported in 2015 (4)SCC 334*** in support of his contention.

4. The State counsel on the other hand submits that it is a case where admittedly the petitioner has been provided with some erroneous fixation of pay on account of which he has received certain amount in excess to what he was otherwise legally entitled for and the moment it was detected in the course of settling retiral dues of the petitioner the department has taken steps for adjusting the same from the retiral dues. Thus, it cannot be said to be erroneous.
5. Having heard the contentions put forth on either side and on perusal of the record, admittedly the petitioner worked as an Assistant Sub Inspector which is a Class-III post. The alleged excess payment has been made to the petitioner on account of wrong fixation made by the department. It is not the case of the respondents that there has been any misrepresentation made by the petitioner for getting the said erroneous fixation.
6. Given the aforesaid facts, it would be relevant at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of ***Rafiq Masih*** (supra) wherein it has been very emphatically held by the Supreme Court that in the given situations, the recovery would be impermissible under

law. Some of the situations in the said judgment of **Rafiq Masih** (supra) are reproduced hereinunder:

“11. Recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

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- (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. Taking into consideration the aforesaid situations and comparing the same with the facts of the present case, this Court is of the opinion that the case of the petitioner stands squarely covered by the judgment of the Supreme Court in the case of **Rafiq Masih** (supra).

8. Thus, the impugned order of recovery dated 19.09.2020 is not sustainable and the same deserves to be and is accordingly set aside/quashed. The writ petition stands allowed.
9. The recovery made of Rs.2,00,840/- by the department would be forthwith released to the petitioner within a period of 90 days from the date of receipt of copy of this order.

Sd/-
(P. Sam Koshy)
Judge

inder