

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5497 of 2020**

K. K. Mitra S/o Late Pankaj Kumar Mitra, Aged About 63 Years (Retired Pump Operator), R/o L-6, Vinoba Nagar, Bilaspur, District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Public Health Engineering, Mahanadi Bhawan, Nava Raipur, District Raipur, Chhattisgarh
2. Engineer In Chief, Public Health Engineering, Indrawati Bhawan, Nava Raipur, District Raipur, Chhattisgarh
3. Chief Engineer, Public Health Engineering, Bilaspur Circle, Bilaspur Chhattisgarh
4. Executive Engineer, Public Health Engineering, Mungeli, District Mungeli, Chhattisgarh
5. Director, Directorate Of Treasury, Account And Pension, Raipur Chhattisgarh
6. Joint Director, Treasury, Account And Pension, Bilaspur, Chhattisgarh
7. District Treasury Officer, Mungeli, District Mungeli, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Syed Majid Ali, Advocate
For State	:	Mr. Rahul Jha, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****22.01.2021**

1. The Challenge in the present writ petition is to the recovery proceeding initiated by the respondents recovering an amount of Rs.99,796/- from the petitioner.
2. The facts of the case in brief are that the petitioner was working as a Class-III employee under the respondents on the post of Hand Pump Technician. The petitioner, on attaining the age of superannuation, stood retired from service w.e.f. 31.12.2019. The respondents immediately before retirement of the petitioner in September, 2019 initiated recovery proceeding against the petitioner for an amount of Rs.99,796/- and certain recoveries were also made from the monthly salary of the petitioner for the month of September to November, 2019. The petitioner in between was also made to deposit the balance of the amount by way of a challan and which the petitioner has deposited and as such the entire amount of Rs.99,796/- stands recovered by the respondents.
3. The contention of the petitioner is that the said action of recovery initiated by the respondents is per se bad in law for the reason that the same has been issued in total contravention to the principles of natural justice inasmuch as no opportunity of hearing was given to the petitioner before initiating recovery proceedings. Even otherwise, in the light of 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 recovery part becomes impermissible under law. It is also the contention of the petitioner that the said alleged excess payment paid to the petitioner was not on account of any misrepresentation or fraud played by the petitioner but

was on account of the error on the part of the respondents. Thus, recovery on this ground also could not have been made by the respondents.

4. State counsel, on the other hand, opposing the petition submits that in the instant case, the recovery proceedings have been initiated while the petitioner was in service. According to the State counsel, in the course of scrutiny of the dues payable to the petitioner on his retirement it was detected that the petitioner had been paid certain pay band erroneously w.e.f. 01.05.2006 which has been ordered to be recovered by the authorities and therefore, the same cannot be said to be in any manner arbitrary, bad in law or faulty.
5. Having heard the contentions put forth on either side and on perusal of the record it would be relevant at this juncture to refer to the judgment of the Supreme Court in the case of **Rafiq Masih(supra)**. The Hon'ble Supreme Court while deciding such issue has laid down certain situations under which the recovery is totally impermissible under law. The situations as envisaged in the said judgment are reproduced hereinunder :

“(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."

6. In the light of the aforesaid authoritative decision of the Hon'ble Supreme Court, in the opinion of this Court, the case of the petitioner also squarely falls within the situations so subscribed by the Hon'ble Supreme Court in its order, wherein the recoveries of similar nature have been held to be impermissible under law.
7. Since the entire amount has already been recovered, it is directed that the said recovered amount of Rs.99,786/- be paid to the petitioner forthwith preferably within a period of 90 days from the date of receipt of copy of this order.
8. The writ petition accordingly stands allowed and disposed off.

Sd/-
P. Sam Koshy
Judge