

(2018) 07 CHH CK 0310

Chhattisgarh High Court

Case No: Writ Petition (S) No. 697, 698 Of 2017

Trilochan Prasad Malakar And
Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: July 26, 2018

Acts Referred:

- Constitution Of India, 1950 - Article 142

Hon'ble Judges: Sharad Kumar Gupta, J

Bench: Single Bench

Advocate: Prakash Tiwari , Majid Ali

Final Decision: Partly Allowed

Judgement

Sharad Kumar Gupta, J

1. As the identical point for consideration is involved, these writ petitions are being disposed off by this common order.
2. The petitioners preferred these writ petitions seeking relief that impugned order Annexures P/1 dated 20.01.2017 be quashed and refund the recovered amount with interest to them.
3. This is admitted by respondents that the petitioners are Sub Inspector(M)/ Subedar (M) cum Head Clerk/Assistant Sub Inspector (M) under the office of Superintendent of Police, Janjgir District - Janjgir-champa. They have given notice to them and they have replied. They are recovering the excess amount paid to them due to pay fixation, from their salaries in installments.
4. In brief, case of the petitioners is that excess payment might have been made by wrong calculation or wrong interpretation of the provisions of law

on part of respondents. The action of the respondents is not sustainable in the eyes of law. They are class 3 employees and no recovery can be made from their salaries.

5. In brief, case of the respondents is that it was found that excess amount has been paid to the petitioners while extending the benefits of revised pay scale to them. Excess amount which has been paid to the petitioner is recoverable from them.

6. Counsel for the petitioners vehemently argued that recovery/deduction of the excess amount from the salaries of the petitioners is not justifiable because they are the class 3 employees and as per law excess amount is not recoverable from them.

7. On the other hand, the Government Advocate for the respondents argued that excess payments which were made in favour of the petitioners are legally recoverable. The petitioners had knowledge that excess payment had been made to them. They are wrongly benefited, thus the competent authority can recover the excess amount by deducting the same from their salaries.

8. Hon'ble Supreme Court in the matter of State of Punjab and others -v- Rafiq Masih and others [(2015) 4 SCC 334] in paras 7 and 18 has observed as under :-

7 Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, ""for doing complete justice in any cause"" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.

9. Hon'ble Supreme Court in the matter of High Court of Punjab and Haryana and others -v- Jagdev Singh [(2016) 14 SCC 267] approved the annunciated proposition in (i), (iii) (iv), and (v) of Rafiq Masih (supra).

10. In the case in hand, respondents have not disputed that the petitioners are class 3 employees. Thus, this Court finds that indisputably petitioners are the class 3 employees.

11. In the case in hand the petitioners have not furnished any undertaking while opting revised pay scale.

12. In the case in hand, this is not the respondents' case that the petitioners were accessory in the process of granting excess amount, they have furnished factually incorrect information, they have committed fraud or they have misrepresented them before the respondents.

13. The excess payment to the petitioners is the result of the sheer error or mistake on the part of the respondents for which the petitioners cannot be

held liable to repay the excess amount.

The petitioners cannot be saddled with the recovery of the excess amount paid to them.

14. Looking to the above mentioned facts and circumstances of the case, judicial precedents laid down in Rafiq Masih (supra) and Jagdev Singh

(supra), this Court finds that the principle enunciated in proposition (i) in Rafiq Masih (supra) is applied to the petitioners' case and the respondents

cannot legally recover / deduct the excess amount paid to petitioners. Thus, such recovery / deduction is illegal. Hence, the impugned orders

Annexures P/1 are set aside so far as it relates to recovery of excess amount only and it is ordered that no recovery/ deduction shall be made from

the petitioners' salary against the excess amount paid to them from today. The amount which has been already recovered/ deducted be refunded to

the petitioners.

15. The respondents are directed to pay the petitioners appropriate regular pay scale as per their entitlement as per law.

16. Since the petitioners are beneficiaries of the wrong calculation of fixation of pay made by the respondents, thus they are not entitled to get interest

at any rate on refundable amount.

17. Thus, the instant writ petitions are partly allowed with the above directions.