

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.219 of 2010

Seeta Ram Sahu, S/o Late Awadh Ram Sahu, aged about 72 years, R/o Village and Post Baigandabari (Hatoud), Tahsil Kasdol, District Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Education, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh.
2. Accountant General, Raipur, Chhattisgarh.
3. The Joint Director, Accounts Treasury and Pension, Raipur, Chhattisgarh.
4. District Treasury, Account, Raipur, District Raipur, Chhattisgarh.
5. Principal, Guru Ghasi Das Higher Secondary School, Kasdol, District Raipur, Chhattisgarh.

---- Respondents

For Petitioner: Mr. Ajit Yadav, Advocate.

For Respondents No.1 and 3 to 5/State:
Mr. Suvigya Awasthi, Panel Lawyer.

For Respondent No.2: Ms. Purnima Singh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/11/2015

1. The petitioner while working as Upper Division Teacher in the Education Department retired from service after attaining the age of superannuation on 31-7-1998. After his retirement, he received notice Annexure P-1 for recovery of Rs.32,136/- along with interest at the rate of 2.5% on account of excess payment

made to him. The said order of recovery is under challenge by the petitioner in this petition contending inter alia that he had already retired ten years back and his life is dependent upon his pension.

2. In view of the decision rendered by the Supreme Court in the matter of **State of Punjab and others v. Rafiq Masih (White Washer) and others**¹, no such amount can be recovered. Para 18 of the said judgment reads as 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 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

¹ (2015) 4 SCC 334

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.”

3. Thus, in view of the law laid down by the decision of the Supreme Court in the above-cited judgment, taking into consideration the fact that the petitioner had already retired on 31-7-1998, the notice has been issued after ten years of his retirement and the case is being covered by the aforesaid decision, it is a fit case where the order Annexure P-1 deserves to be quashed. Accordingly, the order Annexure P-1 stands quashed.

4. The writ petition is allowed to the extent indicated herein-above.

No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge