

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (S) No. 1806 of 2015

Safik Mohammad, S/o Late Mohammad, aged about 65 years, R/o Jhumarpara, Police Station & Post Karanji (Railway), Tahsil Surajpur, Civil & Revenue District Surajpur (C.G.)

---- Petitioner

Versus

1. State of Chattisgarh, through :Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur (C.G.)
2. Collector, Surajpur, Civil & Revenue District Surajpur (C.G.)
3. District Education Officer, Surajpur, Civil & Revenue District Surajpur (C.G.)

---- Respondents

For Petitioner	Mr. Manoj Paranjpe, Advocate
For Respondent/State	Mr. Yashwant Singh, Dy. Advocate General

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

11/05/2015

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. The petitioner has called in question the legality and validity of the impugned orders dated 17.05.2012 and 26.03.2015, whereby, the District Education Officer, Surajpur, directed recovery of the amount of salary paid to the petitioner from the period 30.04.2010 to 10.08.2011.

3. Learned counsel for the Petitioner would submit that the Petitioner continued in service after 30.04.2010, as no order directing his superannuation was passed by the Drawing/Disbursing Authority. He would submit that the petitioner neither misrepresented himself nor committed any fraud with the employer and he continued in service and rendered duties on the post of Head Master.

4. Learned State Counsel would submit that since the Petitioner was not entitled to continue in service after 30.04.2010, as he had already attained the age of superannuation on the said date, the order of recovery is fully justified.

5. This Court in the matter of **Smt. Saraswati Bargotya vs. State of Chhattisgarh and others**, vide order dated 20.04.2015 passed in W.P. (S) No.3912/2007, has observed in para 8 as under :

“8. This Court in the matter of **Ambikeshwar Yadav Vs. State of Chhattisgarh & others** (WP(S) No.4416/2012, decided on 07-10-2013), after placing reliance upon the decision of the Supreme Court rendered in the matter of **State of Bihar Vs. Narasimha Sundram** (1994 Supp (3) Supreme Court Cases 705), in para 4, held thus:-

“4.....the concerned employee before the Hon'ble Supreme Court was allowed to continue in service beyond the age of retirement, however, the salary for the said extended period was not paid to him by alleging that the employee committed fraud in respect of his age. The High Court directed the State Government to make payment of salary for the said extended period during which the employee remained in service after the age of superannuation because he had worked during the said period and the said order of the High Court has been maintained by the Supreme Court.

6. The facts of the case in hand is almost similar to the facts of the case decided by the Supreme Court in the matter of **Narsimha** (Supra). The present Petitioner also continued in employment probably

because of the representation filed by him raising a dispute about his date of birth.

7. Be that as it may, the Petitioner has rendered service during the period from 30.04.2010 to 10.08.2011 and was paid salary for the duties discharged by him. Therefore, the observations made by the Supreme Court in the matter of Narsimha (Supra) squarely applies in the present case.
8. For the foregoing reasons, the impugned order of recovery of the amount from the salary paid to the Petitioner from the period 30.04.2010 to 10.08.2011 is quashed. However, the same would not amount to continuation of his service after 30.04.2010. In other words, the petitioner is treated to have retired on 30.04.2010.
9. At this stage, Mr. Paranjpe would submit that because of the impugned recovery, the petitioner's pension and other retiral benefits have not been paid, therefore, the respondents may be directed to do the needful at the earliest.
10. Since the impugned recovery has been quashed and the petitioner is treated to have retired on 30.04.2010, the respondents are directed to finalise the Petitioner's entitlement to pension and other retiral benefits at the earliest preferably within a period of 3 months from the date of submission of certified copy of this order.
11. In the result, the writ petition is allowed to the extent indicated above.

JUDGE