

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) NO. 1962 OF 2011

Chakradhar Prasad Pandey, S/o Shri Pyarelal Pandey, aged about 70 years, Rtd. Head Master, Post Portha (Sakti), Distt. Janjgir-Champa (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, School Education Department, D.K.S. Bhawan, Raipur (C.G.)

2. Divisional Joint Director, Treasury and Pension, Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate.
For Respondents	:	Mr. V.A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/08/2016

1. Challenge in the present writ petition is to the order dated 25.7.2003 whereby the Respondents have ordered for recovery of an amount of Rs.26,274/- from the pensionary benefits payable to the Petitioner.

2. Learned Counsel for the Petitioner submits that the Petitioner stood retired with effect from 30.4.2002 from the post of Headmaster. True it is that there is an inordinate, unexplained delay in the filing of the present writ petition for a period of more than 8 years as the petition was filed in the year 2011. The peculiar facts and circumstances of the present case are that firstly the Petitioner being a senior citizen over 70 years of age and secondly he being a retired government teacher and also the fact that subsequent to his retirement he must have been more involved in settling of his family for the post retirement life, must have weighed more in the mind of the Petitioner not to challenge the order of recovery at that point of time.

3. However, it is true that the law in this regard all along was well settled even on the date of the order of recovery being passed that in the event if an amount has been paid to an employee at the fault of the employer or the employees of the employer with no misrepresentation being made by the concerned employee, recovery could not be made. This issue now stands decided by the landmark decision of the Supreme Court in **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.**, 2014 (8) SCC 883=2015 AIR SCW 501, wherein in paragraph 12 the Supreme Court has given specific guidelines under the categories of the instances where the recovery would not be made:

“12. 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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D').
- (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.”

4. One such category has been enunciated in 12(ii) hereinabove which is the category of recovery being made from retired employees. In the instant case, the reply of the State Government also is as vague as it can be to the extent that this reply does not reveal as to on what ground the

recovery is being made and whether the excess amount that they intent to recover was because of fault on the part of the Petitioner or whether it was the fault on the part of the Accounts department of the Respondents.

5. In view of the facts and the pleadings made by the State Government, this Court is compelled to pass an order holding that the order of recovery so passed is bad in law, also keeping in view the decision made in Rafiq Masih (*supra*). That the order of recovery as such is bad in law, and the amount of recovery is said to have already been adjusted by the Respondents from the retiral dues of the Petitioner. Hence the Petitioner shall be entitled for the refund of the amount which has been recovered. So far as grant of interest is concerned, the Petitioner because of his own fault of not approaching the Court immediately would not be entitled for the interest on the amount from the date of recovery till the date of filing of the present petition and for the subsequent period i.e., from the date of filing of the present petition till the date of realisation, he would be entitled for interest at the rate of 6% per annum. The said amount shall be paid to the Petitioner forthwith within a maximum period of 60 days from today.

6. The writ petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge