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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3814 of 2012**

- Miss Ragini Verma D/o Shri Sohan Lal Verma, Aged About 53 Years, Occupation Service, Presently Working As Laboratory Teacher, Under The Government Bilasa Girls Post Graduate College, Link Road Bilaspur, District Bilaspur, R/o Madhya Nagari Chowk, In front of Maharashtra Bank, Bilaspur, District Bilaspur (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary Higher Education Department D.K.S. Bhawan Raipur C.G.
2. The Commissioner Directorate Higher Education Raipur District Raipur C.G.
3. The Joint Director Treasury Accounts & Pension Bilaspur Division Bilaspur District Bilaspur C.G.
4. The Principal Government Bilasa Girls Post Graduate College, Bilaspur, District Bilaspur C.G.

---- Respondents

For Petitioner	:	Shir RK Sharma, Advocate
For Respondents-State	:	Shri Rajendra Tripathi, PL for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****25/02/2016**

1. In this petition under Article 226 of the Constitution of India, the petitioner would assail the order dated 1-6-12, passed by the Principal, Government Bilasa Girls Post Graduate College, Bilaspur, directing recovery of Rs.1,60,230/- from the petitioner @ Rs.4450/- per month.
2. It is argued by learned counsel for the petitioner that the excess payment has allegedly been made in respect of increment wrongly granted to the

petitioner by the employer. He would submit that the petitioner was granted the said benefit from 9-9-89 to 1-5-12 i.e. more than five years back. As a result of the said alleged benefit for which the petitioner is said to be not entitled, a small sum in form of increment was paid to the petitioner for which she is not at all responsible. He would draw attention of the Court to the order Annexure R-2 wherein the Assistant Director, Higher Education, Government of Chhattisgarh has sanctioned the increment in compliance of order passed by the Madhya Pradesh State Administrative Tribunal (for short 'the MPSAT') in O.A. No.384/2001.

3. Per contra, Shri Rajendra Tripathi, learned panel lawyer for the State would submit that the petitioner was not at all entitled for increment during the *ad hoc* period, however, on account of wrong payment of increment during the *ad hoc* period, the amount has accumulated to the tune of Rs.1,60,230/-. He would submit that the recovery is not made after the retirement of the petitioner, but the petitioner is still in service, therefore, the recovery is neither illegal nor arbitrary.
4. It appears, the erstwhile MPSAT passed an order in O.A. No.384/2001 holding the petitioner to be entitled to annual increment during the *ad hoc* period. While rendering the said judgment, the MPSAT relied on several of its previous judgments including that of **Dr. P.L. Malik Vs. State of M.P. & others {1991 MPLSR 475}**. Pursuant to this order, the Additional Director, Higher Education, Chhattisgarh passed an order on 28-11-01 and thereafter the payment has been made to the petitioner. Thus, it would clearly appear that the petitioner was paid the benefit of increment pursuant to an order passed by the MPSAT and not on account of any fraud or misrepresentation played by her.

5. In the matter of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others**, the Supreme Court has held thus in para 18:-

“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.”

6. In the present case also, order for payment of amount to the petitioner was issued in the year 2001 i.e. more than 5 years back. Hence the matter is squarely covered by the judgment rendered by the Supreme Court in the case of **Rafiq Masih** (*supra*).
7. For all the aforesaid reasons, the writ petition deserves to be and is hereby allowed. The impugned order of recovery of Rs.1,60,230/- is set aside.

Sd/-

Judge
Prashant Kumar Mishra

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