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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2103 of 2016**

Smt. Shamshad Begum Wd/o Late Shri Ziauddin Ahmed, Aged About 62 Years R/o Gudakhu Line Tehsil & District Rajnandgaon (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through : The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Distt. Raipur (Chhattisgarh)
2. District Education Officer, Rajnandgaon District Rajnandgaon, Chhattisgarh.
3. Block Education Officer, Block Rajnandgaon, District Rajnandgaon (Chhattisgarh)
4. Joint Director, Treasury, Account And Pension Department, Raipur Division, Raipur (Chhattisgarh)

---- Respondents

For Petitioner:

Shri Anup Majumdar, Advocate

For State :

Shri Adhiraj Surana, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****09.06.2016**

1. The Petitioner through the present Writ Petition has challenged the Order, Annexure P/1 dated 27.05.2016 whereby the State Government has passed an order for recovery of Rs. 58,381/- from the retiral benefits payable to the Petitioner.

2. Learned Counsel for the Petitioner submits that Respondent No. 2 had passed the order with malafide and arbitrary manner without providing any opportunity of hearing to the Petitioner. Even if the entire version of the Respondent is taken into consideration the admitted fact of the case the

alleged amount of recovery ordered to be recovered from the Petitioner is the amount which has been received by him because of an error committed on part of the employees of the Respondent for which the Petitioner can not be blamed, particularly when the Petitioner has not received the said excess amount by any missappropriation, misrepresentation or fraud played by the Petitioner on the contrary it was on account of a mistake of wrong fixation made by the Respondent.

3. The law in respect of the recovery by now is well settled by a catena of decisions starting from **(1995) SCC, Supl. (1) 18 JT 1995 (1) 24** in the case of ***Sahib Ram Vs. The State of Haryana and Others*** and the most recent being the case of ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.*** reported in **(2015) AIR SCW 501**, wherein it has been repeatedly and in very categorical terms held by the Supreme Court that in the event if any excess payment has been made to an employee for no fault of the employee and the said amount has been paid to him without there being any misrepresentation or fraud played by the employee, the recovery of the said amount would be improper on the part of the employer. It has been held in paragraphs-11 & 12 as under:-

“11. Recovery of excess payment, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before

their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

“12. xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx

(I) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(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. Admittedly, in the present case the Respondent in their reply has not taken a stand that the excess amount paid to the Petitioner is because of any misappropriation or fraud on part of the Petitioner but stand of the Respondent is that excess payment has been paid because of the mistake/error on part of the employees of the Respondent. Thus, for the lapses on the part of the employees of the Respondent the Petitioner cannot be punished at a later stage particularly after having been superannuated, by making recovery from the pensionary benefits that are payable to an employee.

5. In view of the law laid down by the Supreme Court on issue of recovery the present Writ Petition is allowed and the impugned order dated 27.05.2016 to the extent ordering the recovery being made from the amount payable to the Petitioner stands quashed and the amount if has been deducted by the Respondent shall be paid to the Petitioner within a period of three months from today.

6. With the aforesaid observations the Petition stands disposed of.

Sd/-
(P. Sam Koshy)
V. JUDGE