

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 316 of 2016**

1. State of Chhattisgarh Through : The Secretary, Government of Chhattisgarh, Higher Education Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. The Commissioner, Directorate of Higher Education, Raipur, District Raipur, Chhattisgarh.
3. The Joint Director, Treasury Accounts And Pension, Bilaspur, District Bilaspur, Chhattisgarh.
4. The Principal, Government Bilasa Girls Post Graduate College, Bilaspur, District Bilaspur, Chhattisgarh.

---- Appellants**Versus**

Miss Ragini Verma D/o Shri Sohan Lal Verma, Aged About 57 Years Occupation Government Service, Presently Working As Laboratory Teacher, Government Bilasa Girls Post Graduate College, Link Road, Bilaspur, District Bilaspur, R/o Madhyanagri Chowk, In Front of Maharashtra Bank, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh.

---- Respondent

For Appellants/State	: Shri Yashwant Singh Thakur, Deputy Advocate General
For Respondent	: Shri Rajesh Kumar Sharma, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, J.

Order on Board**Per Deepak Gupta, Chief Justice****04/07/2016**

1. This appeal by the State is directed against the order dated 25.2.2016 delivered by the Learned Single Judge of this Court in Writ Petition (S) No.3814 of 2012 whereby the Learned Single Judge has allowed the writ petition and quashed the order passed by the Principal Government Bilasa Girls Post Graduate College, Bilaspur directing recovery of Rs.1,60,230/- from the Appellant/writ Petitioner at the rate of Rs.4450 per month.

2. The facts necessary for disposal of this writ appeal are that the writ petitioner is working as Laboratory Technician in the college in question. She made a claim that she was entitled to certain extra increments. When the increments were not granted to her, she approached the Madhya Pradesh State Administrative Tribunal (for short "the Tribunal") by filing O.A. No.384 of 2001. Admittedly, this O.A. was disposed of with a direction to the State to decide the claim of the writ petitioner. Thereafter, the State decided the claim in her favour and sanctioned the payment of increments. The benefit of extra increments were given to the writ petitioner w.e.f. 9.9.1989 to 1.5.2012. Suddenly, in the year 2012 the State woke up and an order was passed on 1.6.2012 that this entire payment made to her was against the rules and thereafter an order of recovery was passed.

3. The Learned Single Judge relying upon the judgment passed by the Apex Court in *State of Punjab & Others v. Rafiq Masih (White Washer) & Others*, (2015) 4 SCC 334, held that since the payment order was issued in favour of the writ petitioner in the year 2001 and payment had been made for many long years and this was a recovery being made to recover the excess payment made for a period of five years and therefore not permissible.

4. Aggrieved by this judgment, the State has approached this Court by filing this appeal. We are of the considered opinion that there is no error in the judgment passed by the Learned Single Judge. In *Rafiq Masih (supra)*, the Apex Court has clearly held that in paragraph-18 as follows:

"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, of 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."

5. This case is squarely covered by paragraph- 18(iii) of the aforesaid judgment of the Apex Court, which prohibits the 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. In this case there is no misrepresentation by the writ petitioner. Her claim may have been correct or incorrect but this is not a case where she stated any false facts or misrepresented any facts. Her claim was accepted by the State in the year 2001 and benefit given to her from 9.9.1989 to 1.5.2012. She has enjoyed this benefit for 23 long years and at the fag end of her carrier, it would be highly unjust to order recovery of the extra increments.

6. We therefore find no merit in the writ appeal. The appeal is accordingly dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay K. Agrawal)
JUDGE