

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 6791 OF 2016

Siyaram Rathore, S/o Late Dukhiram Rathore, aged about 69 years, Assistant Teacher, Govt. Primary School, Jamnipali (NTPC), Korba, Block Katghora, District Korba (C.G.), R/o Village Durpa, Post Sarhar, Baradwar, District Janjgir-Champa (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)
2. Joint Director, Treasury, Account and Pension, Mantralaya, Bilaspur, Bilaspur (C.G.)
3. District Education Officer, Korba, District Korba (C.G.)
4. Block Education Officer, Katghora, District Korba (C.G.)

... Respondents

For Petitioner	:	Mr. K.S. Pawar and Mr. Shashi Kumar Kushwaha, Advocates.
For Respondents	:	Mr. Adhiraj Surana, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/03/2017

1. Challenge in the present writ petition is to the order dated 21.7.2010 (Annexure P-3) whereby the Respondents have ordered for recovery of Rs. 55,787/- from the retiral dues payable to the Petitioner.
2. Counsel for the Petitioner submits that the Petitioner in the instant case has been retired as Assistant Teacher from the Government Primary School, Jamnipali, Korba with effect from 31.1.2010. That while settling the retiral dues, Annexure P-3, dated 21.7.2010, was passed whereby the Respondents have found that an excess payment of Rs.55,787/- has been paid to the Petitioner during his service period and therefore have ordered for recovery of the same. Subsequently, vide Annexure P-4, dated 27.10.2010, the said amount has been deposited by the Petitioner, which had to be made by the Petitioner under compulsion for the reason that the Respondents had withheld the retiral dues of the Petitioner.

3. Counsel for the Petitioner further submits that the said order of recovery passed by the Respondents is per se illegal in the light of the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and Others v. Rafiq Masih (White Washer) and Others*, reported in 2015 (4) SCC 334. He submits that after the Petitioner having retired from services, the Respondents could not have initiated recovery proceeding at all.

4. The impugned order dated 21.7.2010, Annexure P-3, categorically states that the amount was paid to the Petitioner on account of some wrong fixation of pay made at the hands of the officers of the Respondent-State Government. The impugned order does not reflect any misrepresentation or any fraud to have been played by the Petitioner for obtaining the said excess payment. This fact is not disputed by the State Counsel.

5. In view of the said given admitted position, the issue involved in the present case stands squarely covered by the decision of the Hon'ble Supreme Court rendered in the case of *State of Punjab and Others v. Rafiq Masih (White Washer) and Others* [2015 (4) SCC 334], wherein it has been held as under:

- “(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.”

6. Admittedly, in the instant case, the Petitioner stood retired from services with effect from 31.1.2010. The notice of excess amount/order of recovery has been passed much after the order of retirement and therefore the said judgment squarely applies in the present case as well.

7. Thus, the impugned order of recovery against the Petitioner stands quashed. It is directed that the Respondents shall forthwith release the entire payment of Rs.55,787/- which the Petitioner had deposited with the Respondents, with interest thereon at the rate of 6% per annum till the date of its realisation.

8. With the aforesaid direction, the writ petition stands allowed. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE