

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4466 of 2015**

- Ramcharan Ram S/o Late Dhodha Ram, Aged About 63 Years R/o Hardisand Post Baneya, Tahsil Sitapur, Presently Residence Of Aadarsh Nagar, Sitapur, P. S. Sitapur, District Surguja, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Education Department, Mahanadi Bhawan, Mantralaya, P. S. Rakhi, Tahsil Aarang, Naya Raipur, District Raipur, Chhattisgarh.
2. Joint Director, Accounts Treasury And Pension, Ambikapur, Chhattisgarh.
3. District Treasury Officer, Ambikapur, District Surguja, Chhattisgarh.
4. Block Education Officer, Mainpat, District Surguja, Chhattisgarh.

---- Respondents

For Petitioner:	Mr. H. Khuntiya, Advocate
For State :	Mr. S.P. Kale, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23.02.2017**

1. The present Petition has been preferred by the Petitioner assailing the order dated 14.09.2015 Annexure P/3 whereby a recovery of an amount of Rs. 86632/- has been ordered to be made from the retiral dues of the Petitioner.
2. Learned Counsel for the Petitioner submits that the present Petitioner retired as Head Master with effect from 30.06.2015. Subsequently while settling the retiral dues an order was passed by the Respondent No.2 for recovery of the excess money on account of wrong fixation of salary given to the Petitioner from 01.05.1998 to 30.06.2015 and therefore an order of recovery has been made while settling his retiral dues

to the tune of Rs. 86,632. The Counsel for the Petitioner submits that the said excess amount has been paid to the Petitioner not on account of any misappropriation made by the Petitioner or by any fraud played by the Petitioner but it is because of the mistake made by the officers of the Respondents. For all this reason the Petitioner should not be punished after retirement and no money shall be recovered from the retiral dues.

3. Learned Counsel for the Petitioner further relied upon the decision of the Supreme Court in case of ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.*** reported in **2015 AIR SCW 501**, wherein it has been in very categorical terms held in paragraph 18 as under:-

“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 herein above, 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' 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. Learned State Counsel however opposes the Petition on the ground that the State is entitled to make any correction or rectification or recovery in respect any excess payment. According to the State Counsel the Petitioner has received excess amount which he was otherwise not entitled for. Therefore, order of recovery cannot be said to be bad in any manner.
5. So far as the plaint in the present Petition is concerned Petitioner is assailing only the action on part of the Respondent to the extent of recovery being made from his retiral dues. He does not intend to challenge any rectification on part of the Respondent if any so far as the wrong fixation of the pay is concerned. However, so far as the recovery is concerned in the light of the law laid down by the Supreme Court in case of ***State of Punjab and others (Supra)*** this Court has no hesitation in reaching to the conclusion that the Respondent State would not

be entitled to make any recovery which has been made on account of error on part of the officers of the Respondent State.

6. Accordingly, the impugned order of recovery issued against the Petitioner stands quashed. It is made clear that the Respondent State would not be in any manner permitted to make recoveries for the excess payment which has been made.

7. The Writ Petition stands disposed off in aforementioned terms.

Sd/-

(P. Sam Koshy)
JUDGE