

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4336 of 2016**

- Smt. Beronika Ekka W/o Silbanus Gidh, Aged About 62 Years R/o Post Kaya, Tahsil Gharghoda, District Raigarh, (Chhattisgarh)

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through Secretary, Education Department, Mantralaya, Mahanadi Bhawan, P.S. Rakhi, Tahsil Aarang, Naya Raipur, District Raipur, (Chhattisgarh)
2. District Education Officer, Raigarh, District Raigarh, (Chhattisgarh)
3. Block Education Officer, Gharghoda, District Raigarh, (Chhattisgarh)
4. Joint Director, Accounts, Treasury And Pension, Bilaspur Division, Bilaspur, (Chhattisgarh)

---- **Respondent**

For Petitioner : Shri CJK Rao, Advocate.

For Respondent/State : Shri Adhiraj Surana, Deputy GA.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****27/03/2017**

1. The petitioner would assail recovery of Rs.2,31,275/- from her pensionary benefits on the ground that the said amount has wrongly been paid to the petitioner on account of incorrect fixation of pay.

2. Shri Rao, learned counsel for the petitioner would submit that the petitioner was appointed in the year 1986 on a fixed pay of Rs.300/- for the first year and thereafter she was allowed regular pay scale of Rs.975/- per month. In number of writ petitions, the High Court of M.P. and this Court as well have allowed prayer of similarly situated teachers holding them to be entitled for grant of regular pay scale from the date of initial appointment. The petitioner was allowed regular pay scale without intervention of the Court, however, at the time of finalization of pension, the amount of Rs.2,31,275/- has been directed to be recovered for the reason that the petitioner had not preferred any writ petition earlier and the said amount was wrongly granted to her. The submission therefore is that if the petitioner was entitled in law to receive regular pay scale from the date of initial appointment, it hardly matters whether the same was allowed after intervention of the Court or without intervention of the Court.
3. The respondents have not stated in the return as to on what count the petitioner was not entitled for regular pay scale from the date of appointment. The return would only state that as per the appointment letter the petitioner was entitled to fixed pay of Rs.300/- per month, however, she was allowed scale of Rs.975/- per month from the date of initial appointment without there being any order to this effect, therefore, the amount was wrongly paid to her.
4. Perusal of circulars (Annexure-P/2) dated 5.1.2011 and 27.12.2008 would indicate that similarly placed employees have been allowed regular pay scale from the date of initial appointment and the Finance Department has sanctioned such pay scale only in cases

where the orders have been passed by the High Court in favour of the employees.

5. In the considered opinion of this Court, if the petitioner is otherwise similarly placed, she too was entitled for regular pay scale from the date of initial appointment and merely because she was allowed regular pay scale without intervention of the Court, fault would not lie upon the petitioner.
6. At this stage, learned State Counsel would submit that at the time of retirement the petitioner has accorded consent for recovery of any amount which was paid in excess to her.
7. Such consent would not apply to a case where the employee was lawfully entitled to amount paid to her and similar benefits have been allowed to similarly placed employees. For that, the amount has to be paid to the employee for which he/she is not entitled in law.
8. In the matter of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others**¹, 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

¹ (2015) 4 SCC 334

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."

9. In the present case also, impugned recovery is for payment which was made to the petitioner. Moreover, no opportunity of hearing has been granted to the petitioner before making the subject recovery. Therefore, applying the law laid down in the matter of **Rafiq Masih** (Supra), the Writ Petition is allowed and the impugned recovery is quashed.

Sd/-
Judge
 (Prashant Kumar Mishra)