

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 4442 OF 2013

- Baharteen Bai Ijardar, W/o Bharat Lal Ijardar, aged about 67 years, Retd. U.D.T., R/o Naya Ganj, Purana Badpara, Near Samleshwar Mandir, Raigarh, PS Kotwali, Civil & Revenue District Raigarh (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Education Department, Mantralaya, Mahanadi, New Raipur, Distt Raipur (C.G.)
2. The District Education Officer, District Raigarh (C.G.)
3. The Joint Director, Treasury, Account and Pension, Bilaspur, Circle Bilaspur, District Bilaspur (C.G.)
4. The Accountant General, Chhattisgarh, District Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. Rakesh Anthony, Advocate.
For Respondent-State	:	Mr. Avinash Singh, Panel Lawyer.
For Respondent No.4	:	Mr. R.K. Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/04/2017

1. Challenge in the present Writ Petition is to the order dated 11.10.2010 (Annexure P-1) whereby the Respondents have ordered for recovery of an amount of Rs.47,844/- from the retiral dues payable to the Petitioner.
2. Learned Counsel for the Petitioner submits that the Petitioner has been retired from the office of the Respondents on 31.8.2006 from the post of Upper Division Clerk, Natwar High School, Raigarh. According to the Counsel for the Petitioner, after the retirement though all the other retiral dues have been released to the Petitioner, however, vide order dated 11.10.2010 (Annexure P-1) a decision has been taken for recovery of an amount of Rs.47,844/- which was allegedly paid to the Petitioner in excess. Learned Counsel for the Petitioner submits that the said excess amount received, if at all, was not on account of any misrepresentation or fraud

played by the Petitioner but it was on account of the error on the part of the Respondents and therefore at best the Respondents could have only rectified the mistake but recovery could not have been made. He next submits that the law in this regard stands fully settled by the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and Others v. Rafiq Masih (White Washer) and Others* [2015 (4) SCC 334].

3. Learned Counsel for the State, however, opposes the Writ Petition, on the ground that any excess amount which has been paid to the Petitioner, the State is liable to recover the same for the reason that the said amount cannot be given to the Petitioner, if she is legally otherwise not entitled for the same, and prays for the dismissal of the Writ Petition.

4. The impugned order dated 11.10.2010, Annexure P-1, 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. 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 v. The State of Haryana and Others*, and the most recent being the case of *Rafiq Masih (supra)* wherein it has been authoritatively and in very categorical terms held by the Hon'ble Supreme Court that in the event if any excess payment which has been paid to an employee for no fault of his/her and the said amount having been paid 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 in the case of Rafiq Masih (supra) as under:-

“11. Recovery of excess payments, 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. xxx xxx xxx

- (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.”

6. Thus, in view of the above given facts and also the decisions of the Hon'ble the Supreme Court, this Court is of the opinion that the impugned order to the extent of recovery being made from the retiral dues payable to the Petitioner is bad in law and the same deserves to be and is accordingly set aside.

7. As a consequence, the Writ Petition is allowed. The amount of money which has been recovered by the Respondents shall be forthwith released to the Petitioner within a maximum period of 90 days from today. It is made clear that the Respondents would have the right of rectification of the error committed minus the recovery part.

Sd/-
(P. Sam Koshy)
Judge

/sharad/