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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 740 of 2017

- Agahan Ram Yadav S/o Chamra Ram Yadav, Aged About 70 Years Retired Head Master (Primary School), R/o Village Nawagaon (Salka), Police Station, Block And Tahsil Kota, District Bilaspur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya New Raipur, District Raipur (Chhattisgarh).
2. The Joint Director, Treasury Account And Pension Bilaspur Division Bilaspur (Chhattisgarh).
3. Block Education Officer, Block Kota, District Bilaspur (Chhattisgarh).

----Respondents

For Petitioner: Mr. Ajay Shrivastava, Advocate
For State : Mr. B. Gopa Kumar, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16.03.2017

1. The challenge through the present Writ Petition is to Annexure P/1 dated 17.11.2014 and Annexure P/2 dated 28.09.2015 whereby the Respondents have issued an order of recovery for excess payment made from the period 01.08.1989 to 01.07.2008 to the tune of Rs. 5,23,772/-. The Petitioner was directed to deposit the said amount lest the pension would not be finalised.
2. Learned Counsel for the Petitioner submits that the Petitioner was initially appointed as teacher on 06.01.1996 under the Respondents and retired from

service with effect from 03.09.2008 as Head Master. On a direction received from the Respondents he deposited challan of Rs. 23,729/- in the month of August, 2012. The interim pension has been released to the Petitioner and only 50% of the gratuity amount has been released. Subsequently, at a belated stage the Respondents have issued the impugned order dated 17.11.2014 and subsequently on 28.09.2015 intimating that the Petitioner had been given a wrong pay fixation for the period 01.08.1989 to 01.07.2008 and in the process an excess payment has been made to the tune of Rs. 5,23,772/- and therefore it is ordered to the Petitioner to deposit the said amount. The finalisation of his pension since has been withheld.

3. Learned Counsel for the Petitioner further submits that the Petitioner is a retired employee and the excess amount paid was not on account of any misrepresentation or fraud played by the present Petitioner. The error if at all has occurred was on account of mistake committed by the officers of the Respondent. He submits that in the given circumstances recovery should not be made by the Respondents and thus prayed for the Petition to be allowed so far as the recovery is concerned and a direction be issued for finalisation of his pension and release of remaining retiral dues.

4. Learned State Counsel opposing the Petition submits that it is an admitted fact that the excess amount has been

paid to the Petitioner by way of a mistake on part of the Respondent. Since, an excess payment has been paid it is the right of the Respondents to recover the amount. He further submits that State Government has power for carrying out rectification of the mistake that has occurred.

5. Considering the total facts and circumstances of the case this Court is of the opinion that the issue involved in the case so far as recovery is concerned is no longer *res integra.* It has already been settled by the Supreme Court in series of decision right from **1995 SCC, Supl. (1) 18 JT 1995 (1) 24** in the case of ***Sahib Ram Vs. The State of Haryana and Others*** to the most recent case of ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.*** reported in **2015 AIR SCW 501.**

6. The Hon'ble Supreme Court has laid down broad guidelines, in respect of the situations under which the recovery can be made. The relevant portion of judgment in case of ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.*** is reproduced 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.”

7. In view of the above authoritative decision of the Supreme Court, this Court is of the opinion that the grievance of the Petitioner seems to fall squarely within the criteria and guidelines narrated in the Judgment of ***Rafiq Masih (Supra).*** The Petition thus deserves to be allowed.

8. Indisputably the wrong fixation if at all has been made was at the behest of the Respondents. The Petitioner cannot be blamed for that in any manner. There is no allegation of mis-representation or fraud played by the Petitioner in receiving the excess payment which has been made. Under such circumstances all that the State can do is rectification of the error that has occurred. The State does not have power to recover the amount which has already been paid to the employees on account of the fault of the officers of the State Government.

9. Thus, the impugned orders dated 17.11.2014 and 28.09.2015 stands quashed so far as the recovery is concerned. The Respondents are directed to finalise the pension and also release the remaining retiral dues payable to the Petitioner. Let this exercise be done within a period of 90 days from the date of presentation of the certified copy of this Order.

10. It is made clear that quashing of order of recovery does not preclude the Respondents from making rectification of the erroneous fixation of pay made to the Petitioner.

11. With the aforesaid observation the Writ Petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE

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