

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2295 of 2018**

Dr.Suresh Prasad Tiwari S/o Late Shri K.P.Tiwari, aged about 62 years, R/o Darripara, Ambikapur, District Surguja (C.G.).

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. The Accountant General Chhattisgarh (A & E), Zero Point, Balodabazar Road, Post Office-Mandar, Raipur (C.G.).
3. The District Education Officer, District Surguja (C.G.).

----Respondents

For Petitioner	:	Mr. Rahul Mishra, Advocate.
For Respondent No.2	:	Shri Rajkumar Gupta, Advocate.
For State	:	Mr. Shashank Thakur, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****14/03/2018**

1. The present Writ Petition has been filed challenging the order of recovery post retirement.
2. In this petition there is an order of recovery for an amount to the tune of Rs.2,01,401/-.
3. The petitioner had retired on 31.08.2017. The admitted factual matrix of the case is that the petitioner is not responsible for any erroneous excess payment, which the petitioner is derived from the respondents. The errors which have crept in are exclusively that of the employees of the State Government, who were responsible for releasing the salary and other benefits to the petitioner.

4. The petitioner in due course of time have retired and he was served with the notice of recovery after about two and a half months from his retirement.
5. At this juncture, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***"State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc."*** reported in ***2015 AIR SCW 501***, wherein in the last paragraph, the Hon'ble Supreme Court has given certain guidelines and parameters under which the recovery by the employer would be totally impermissible under law. The first category being the employees belonging to the Class-3 and Class-4 services (or Group 'C' or Group 'D' services). Second category is recovery from the retired employees or the employees who are due to retire within one year from the order of recovery. The third category is the recovery from the employees when excess payment has been made for a period in excess of 5 years before the order of recovery is issued.
6. There are other categories also, but the aforesaid three categories are the categories within which the case of the petitioner would squarely fit in. Admittedly, the petitioner stood retired from service on 31.08.2017. The notice of recovery has been issued after about two and a half months from the date of retirement.
7. Thus, the observations of the Hon'ble Supreme Court holding that under such circumstances, the recovery is impermissible under the law would come in the way of respondents in issuing with the order of recovery.

8. Another aspect which cannot be lost sight of is that in the instant case, it is not the stand of the State Government that the petitioner was responsible for the excess payment that he has received, neither is there any allegation of the petitioner having made any misrepresentation for getting the excess payment.
9. Under the circumstances, this Court is of the opinion that no fruitful purpose would be served in keeping the petition pending as the same is squarely covered by the decision of the Hon'ble Supreme Court in the case of "Rafiq Masih" (supra). Accordingly the petitions stand allowed.
10. However, it is made clear that the respondents if they have reached to the conclusion on enquiry that certain wrong fixation has been made to the petitioner they would have the liberty of rectifying the wrong fixation awarded to the petitioner without initiating any recovery proceedings in respect of the excess payment made.
11. The writ petition with the aforesaid directions stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge