

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2264 of 2018**

Devlal Patel S/o Late Shri Ramadhar Patel Aged About 65 Years
R/o Village Didga, Post Ranitarai, Tahsil Patan, District Durg,
Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. The Director, Public Instruction, Directorate, Indrawati Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
3. The Block Education Officer, Patan, District Durg, Chhattisgarh
4. Accountant General, Zero Point, Vidhan Sabha Road, Raipur, District Raipur, Chhattisgarh
5. Joint Director, Treasury, Account And Pension, Raipur Division, Raipur, District Raipur, Chhattisgarh

----Respondents**AND****WPS No. 2268 of 2018**

Harihar Prasad Tiwari S/o Late Shri Chaitan Prasad Tiwari, Aged About 67 Years, Resident Of Hatakchorua, Vivekanand Ward, Jagdalpur, District Jagdalpur (Bastar) Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. The Director, Public Instruction, Directorate, Indrawati Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
3. The Block Education Officer, Tokapal, District Jagdalpur (Bastar), Chhattisgarh
4. Accountant General, Zero Point, Vidhan Sabha Road, Raipur, District Raipur, Chhattisgarh
5. Joint Director, Treasury, Account And Pension, Raipur Division, Raipur, District Raipur, Chhattisgarh

----Respondents

For Petitioners	:	Mr. R.K. Sharma, Advocate
For State	:	Mr. Lav Sharma, Panel Lawyer
For Respondent No.4	:	Mr. Rajkumar Gupta, Advocate along with Mr. Ashwani Shukla, Advocate

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

13/03/2018

1. These are two writ petitions, whereby the order of recovery post retirement is under challenge.
2. In WPS No. 2264/2018 there is an order of recovery for an amount to the tune of Rs.1,63,565/- and in WPS No. 2268/2018 there is an order of recovery for an amount to the tune of Rs.64,448/-.
3. The two writ petitioners had retired on 31.10.2014 and 31.12.2013 respectively. The admitted factual matrix of the case is that the petitioners are not responsible for any erroneous excess payment, which the petitioners are 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 petitioners.
4. The petitioners in due course of time have retired or were about to retire in a couple of days as was the case of the petitioner in WPS No. 2268/2018, who was served with the notice of recovery four days before 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 petitioners would squarely fit in. Admittedly, the petitioner stood retired from service on 31.10.2014 and 31.12.2013. The notice of recovery has been issued so far as the WPS No. 2264/2018 is concerned after about one year from the date of retirement and so far as the WPS No. 2268/2018 is concerned, it is 4 days before 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. The another aspect which cannot be lost sight is that in both the cases, it is not the stand of the State Government that the petitioners were responsible for the excess payment that they have received, neither is there any allegation of the petitioners 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 reach to the conclusion that certain wrong fixation has been made to the petitioners would have the liberty of rectifying the wrong fixation awarded to the petitioners without initiating any recovery proceedings in respect of the excess payment made.
11. The writ petitions with the aforesaid directions stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved