

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 4388 of 2012**

Anil Kumar Sinha S/o late Brij Bhushan Prasad Sinha, aged about 62 years, occupation retired Lecturer/In-Charge, R/o Gudri Chowk, Ambikapur, District Sarguja (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Tribal Welfare Department, DKS Bhawan, Raipur (CG)
2. The Accountant General, Account and Pension Funds, Pagariya Building Pandri, Raipur, District Raipur (CG)
3. The Joint Director, Treasury Accounts and Pension, Ambikapur, Sarguja Division, District Sarguja (CG)
4. The Assistant Commissioner, Tribal Welfare Department, Ambikapur, District Sarguja (CG)

---- Respondents

For Petitioner	:	Shri Shakti Raj Sinha, Advocate
For Respondent/State	:	Shri Ashutosh Pandey, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****25/04/2018**

The challenge in the preset writ petition is the action on the part of the respondents ordering for recovery of an amount of Rs.93,874/-.

2. The petitioner working on the post of Lecturer stood retired on 29.02.2012. During service, he had also discharge the duties of In-charge Principal of Government Boys Higher Secondary School, Darima, District Sarguja (CG). After his retirement, the petitioner is not being provided his retiral dues. The respondents, in due course of time, found certain excess payment made to the petitioner on account of wrong fixation of pay w.e.f.

01.04.1993 to 29.02.2012 to the tune of Rs.93,874/- which was recoverable from the petitioner.

3. Contention of the petitioner is that the action of recovery initiated by the respondents is per se illegal for the reason that the alleged excess payment received by the petitioner is not on any misrepresentation or fraud played by the petitioner but because of the fault on the part of the officers of the respondents. It is contended that the alleged excess payment or wrong fixation of pay had occurred about 5 years prior to the date of his retirement. He submits that the Department initiated recovery proceedings only after retirement of the petitioner that is to say that while he was in service, the respondents had never detected the error nor have they taken any step for rectification or recovery. Given the aforesaid facts, counsel for the petitioner submits that the action of recovery is impermissible in the light of the judgment of the Supreme Court in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) and Others.** reported in **(2015) 4 SCC 334.** Thus, prayed for issuance of a direction to the respondents to refund the amount recovered from the retiral dues of the petitioner during the pendency of the writ petition.

4. State counsel, however, opposing the petition submits that the petitioner had categorically given couple of undertakings after his retirement from service on the basis of which the recovery has been made. If on the basis of the undertaking given by the petitioner the recovery has been made then the petitioner cannot have a grievance at a later stage, therefore, the writ petition deserves to be rejected. He relied upon the judgment of the Supreme Court in the case of **High Court of Punjab and Haryana and another Vs. Jagdev Singh** reported in **(2016) 14 SCC 267.**

5. Having heard the contention put forth on either side and on perusal of the record, the undisputed fact in the instant case is that the petitioner retired

from service on 29.02.2012. Till the date of retirement, no recovery proceeding was initiated nor any action was taken by the respondents in this regard. The erroneous fixation of pay was between 01.04.1993 to 29.02.2012 and as such the first erroneous fixation of pay occurred in 1993 i.e. almost 19 years prior to the date of his retirement.

6. So far as the undertaking given by the petitioner and the judgment of the Supreme Court in the case of Jagdev Singh (supra) are concerned, the same may not be of much relevance for the reason that the grant of erroneous pay to the petitioner was not at the behest of the petitioner but was because of the error or clerical mistake committed by the employees of the respondents. The petitioner has not made any representation or played fraud for obtaining the same. Moreover, the recovery action itself was initiated after the date of retirement.

7. Given the aforesaid factual matrix of the case, this Court is of the opinion that the case of the petitioner would squarely come within the guidelines laid down by the Supreme Court in the case of Rafiq Masih (supra) where in the operative part of the judgment, the Supreme Court has given certain situations in which the recovery from a Government employee becomes impermissible under law. The case of the petitioner falls squarely within the situations envisaged therein.

8. So far as the judgment of the supreme Court in the case of Jagdev Singh (supra) is concerned, the same is distinguishable on its facts itself where the erroneous fixation of pay was given on the representation made by the employee whereas in the instant case, no such allegations has been made by the respondents against the petitioner. Thus, the said judgment is distinguishable on facts.

9. In the given facts, this Court is of the opinion that the action on the part of the respondents recovering an amount of Rs.93,874/- is bad in law and

illegal and the petitioner is entitled for refund of the said amount forthwith. The said refund should be made by the respondents within a period of 90 days from the date of receipt of certified copy of this order.

10. The Writ petition thus stands allowed and disposed. of.

**Sd/-
(P. Sam Koshy)
JUDGE**