NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3470 of 2014

Chamar Ram Yadav S/o Late Shri Kartik Ram Yadav Aged About 63 Years Retired Upper Division Teacher R/o Village Limgoan, Post Charouda Block And P.S. Malkharouda Distt. Janjgir Champa C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, School. Education Department Mahanadi Bhawan, New Raipur, CG.
2. The District Education Officer, Janjgir - Champa , Distt. Janjgir – Champa, Chhattisgarh.
3. The Accountant General Raipur, Distt. Raipur, Chhattisgarh.
4. Block Education Officer Block Mailkharrouda, Distt. Janjgir Champa C.G.

---- Respondents

For Petitioner	:	Shri Anil Morya, Advocate.
For State	:	Shri Adhiraj Surana, Dy. GA.
For Respondent No.3	:	Shri Raj Kumar Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

23/04/2018

1. The challenge in the present writ petition is to the order dated 19.05.2014 whereby a recovery notice has been communicated to the petitioner showing a deficit balance in the GPF account of the petitioner to the tune of Rs.75,155/-.
2. The counsel for the petitioner submits that the petitioner is Assistant Teacher, a Class-III category employee working with the respondents who stood retired w.e.f. 30.09.2012. He submits that immediately after the retirement, the petitioner had been paid all his retiral dues also. However, in the year, 2013 vide Annexure P/2 dated 25.02.2013 the department has issued an order showing a deficit balance of

Rs.2,73,301/-. The petitioner immediately filed a writ petition before this court being WPS No. 3571 of 2013 which got disposed of on 28.10.2013 referring the case of the petitioner to the High Power Committee constituted by the State Govt. for redressal of the grievance pertaining to retiral dues. Pursuant to the said order, the Committee scrutinized the documents of the petitioner and passed an order on 27.06.2014 holding that the earlier order of recovery issued by the department of Rs.2,73,301/- was not proper. The deficit balance as on date of retirement was infact Rs.75,155/- and for which Annexure P/1 has been issued.

3. The counsel for the petitioner submits that the present case is squarely covered by the decision of the Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334, wherein the Supreme Court has in a categorical term given certain situations in which recovery from an employee has been declared to be impermissible under the law. Some of the situations mentioned in the said judgment are 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."

4. If we consider the facts of the present case with the situations narrated by the Supreme Court in the preceding paragraph, it would reveal that admittedly the petitioner was a Class-III category employee. He has retired from service much before the order of recovery was passed for the first time on 25.02.2013. The respondents have not alleged any misrepresentation or fraud played by the petitioner. The error whatsoever was at the hands of the office of the respondents as there was no proper entry made in the GPF account of the petitioner. Moreover, the excess payment which is alleged to have been paid to the petitioner was also again of a period which was five years prior to date of retirement.
5. Given the aforesaid factual matrix of the case, this court has no hesitation in holding that the order of recovery issued against the petitioner is one which stands protected by the judgment of the

Supreme Court in case of Rafiq Masih (Supra) and as such the said impugned recovery notice is impermissible under the law. Accordingly, the impugned order dated 19.05.2014 (Annexure P/1) deserves to be and is hereby set aside.

6. The petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder