

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 5000 of 2015**

Basant Ram Sahu S/o Suraj Lal Sahu, aged about 65 years, retired Head Master at Govt. Primary School, Jhingapara, Tendua, Police Station Patna, Block Baikunthpur, Civil and Revenue Distt. Korea, Chhattisgarh R/o Tendua, P. S. Patna, Block Baikunthpur, Civil and Revenue Distt. Korea, Chhattisgarh,

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Tribal Welfare Department, Mahanadi Bhawan, Naya Raipur, Distt. Raipur, Chhattisgarh
2. Commissioner, Tribal Welfare Department, Chhattisgarh Govt. Raipur, Distt. Raipur, Chhattisgarh
3. Assistant Commissioner, Tribal Welfare, District Korea (Baikunthpur) Chhattisgarh
4. Joint Director, Treasury, Account and Pension, Ambikapur, Division Surguja, Distt. Surguja, Chhattisgarh
5. Block Education Officer, Block Baikunthpur, District Korea Baikunthpur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri A. S. Rajput, Advocate
For Respondent/State	:	Shri Adhiraj Surana, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****27/04/2018**

The challenge in the preset writ petition is to Annexure P-2 dated 02.08.2015 which is an order issued from the office of respondent no.4 whereby they have shown an excess payment made to the petitioner while he was in service and accordingly have recovered an amount of Rs.33,121/- from the amount payable to petitioner on his superannuation under DCRG Scheme.

2. Counsel for the petitioner submits that the petitioner in the instant case was working as a Headmaster at Government Primary School, Jhingapara who stood retired w.e.f. 30.04.2012 and that the impugned order has been issued after more than 3 years from the date his retirement i.e. on 02.08.2015. He submits that before issuance of the said order no notice was issued to the petitioner nor any enquiry was conducted nor any opportunity of explanation was granted to the petitioner. He submits that the case of the petitioner squarely falls within 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.

3. State counsel, however, opposing the petition submits that the order of recovery has been passed on account of certain excess payment made to the petitioner. When it was detected that the petitioner has been paid something much more than what he was otherwise entitled for, the order of recovery was passed. Therefore, the Department was justified in initiating recovery proceedings.

4. Having heard the contentions put forth on either side and on perusal of record, 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) 4 SCC 334 wherein in paragraph 18, the Supreme Court while summarizing the case has given a few situations wherein recoveries by the employer would be impermissible in law.

“18. (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."

5. In view of the aforesaid decision of the Supreme Court so also considering the facts and circumstances of the case, this Court has no hesitation in holding that the recovery of Rs.33,121/- from the gratuity payable to the petitioner is bad in law and the same is also held as illegal. The petitioner would be entitled for refund of the entire amount recovered by the respondents.

6. Since, the amount has been recovered from the gratuity which the petitioner was entitled for, the petitioner shall also be entitled for interest on the said amount. Accordingly, it is ordered that the amount which has deducted from the petitioner's gratuity shall carry interest @ 6% per annum from the date of recovery till the date of payment.

7. With the aforesaid observation, the Writ Petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE