

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5560 of 2018**

Smt. Kamla Chandrakar W/o Jeevrakhan Chandraker Aged About 62 Years R/o Gram Mohad, Ward No. 49 Post - Mohara, Tahsil - Rajnandgaon, District Rajnandgaon Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of School Education, Mantralaya, Mahanadi, Bhavan, Naya Raipur Chhattisgarh.
2. Divisional Joint Director, Kosh, Lekha And Pension Durg Chhattisgarh.
3. Block Education Officer, Rajnandgaon, District Rajnandgaon Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Rakesh Kumar Thakur, Advocate
For State	:	Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****28/08/2018**

1. The challenge in the present writ petition is to the order Annexure P/1 whereby after the retirement of the petitioner w.e.f. 31.05.2018, the respondents have issued with an order of recovery to the tune of Rs.1,26,622/- in respect of certain excess payments which were paid to the petitioner between 14.03.1996 till the date of retirement.
2. The issue involved in the case may not need much deliberation for the reason that the facts in the instant case are undisputed that the petitioner retired from the services of the respondents as a Headmaster under the School Education Department w.e.f. 31.05.2018.
3. After the retirement, the respondents have now issued with an order of recovery dated 18.06.2018 (Annexure P/1) whereby an amount of Rs.1,26,622/- has been ordered to be recovered from the petitioner.

4. The said amount was allegedly paid to the petitioner between 14.03.1996 to 31.05.2018. It is also not in dispute that the petitioner is a class-III employee and that the alleged excess payment was made or the error crept for the first time more than 5 years prior to the date of retirement or from the date of issuance of the recovery notice. It is also not reflected from the impugned order that the excess payment has been paid to the petitioner on account of any misrepresentation or fraud played by the petitioner. It appears that the said excess payment if any has been paid to the petitioner on account of certain clerical error at the level of the officers in the department.
5. Given the said facts, the case of the petitioner stands squarely covered by the situations which are enumerated by 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*** and therefore the impugned order Annexure P/1 dated 18.06.2018 is not sustainable as such recovery has been held to be impermissible under law by the Hon'ble Supreme Court in the aforesaid judgment.
6. The impugned action of recovery is thus bad in law and liable to be and is accordingly set-aside and petitioner would be entitled for the entire retiral dues.
7. The writ petition thus stands allowed.

bSd/-
(P. Sam Koshy)
Judge