

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**W.P.S. NO. 6772 OF 2018**

Heeralal Sahu, S/o Shri Preet Ram Sahu, aged about 62 years, working as Lecturer at Govt. Higher Secondary School Purur, Block Gurur, District Balod (CG)

... Petitioner**versus**

1. State of Chhattisgarh, through the Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (CG)

2. Director, Directorate, Chhattisgarh Public Instructions, Raipur, District Raipur (CG)

3. Joint Director Treasury and Pension, Durg Division, Durg, District Durg (CG)

4. Principal at Govt. Higher Secondary School Purur, Block Gurur, District Balod (CG)

... Respondents

For Petitioner : Mr. Ajay Shrivastava, Advocate.

For Respondents : Ms. Sunita Jain, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/10/2018**

1. Challenge in the present writ petition is to the order dated 27.9.2018 whereby the respondents have issued an order of recovery to the tune of Rs.1,27,745/-.

2. The said recovery is on account of some erroneous fixation of pay given to the petitioner way back in the year 2008 as also the erroneous granting of time scale with effect from 1.4.2006.

3. Counsel for the petitioner submits that the said order of recovery is otherwise held impermissible in the light of the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and Others v. Rafiq Masih (White Washer) and Others* [2015 (4) SCC 334], and therefore the impugned order is not sustainable.

4. Learned counsel for the petitioner further submits that it is not a case of the respondents where the erroneous fixation or the excess amount paid to the petitioner was for some misrepresentation or fraud played by the petitioner, but it was on account of an error committed by the officers under the respondents and that the petitioner is not at fault for getting the said

amount. He also submits that the petitioner has already enjoyed the facilities that were given to him and as such the respondents at this juncture cannot be permitted to recover the same. He next submits that in the light of the judgment in the case of *Rafiq Masih* since the excess amount has been paid for a period prior to 5 years from the date of recovery, the same becomes impermissible under law, and the same deserves to be set aside.

5. Learned State Counsel so far as the factual matrix of the case is concerned does not dispute the same. However, she submits that it is a case where the petitioner is still in employment and therefore it cannot be said to be a case of post retiral deduction being sought for by the respondents. She further submits that in any case the petitioner has been wrongly granted the benefits and the State Government only intends to recover what has been paid to the petitioner erroneously which he otherwise is not legally entitled for.

6. Having heard the contentions put forth on either side and on perusal of record, what clearly reflects is the fact that the order of recovery firstly has been issued without any sort of explanation being sought from the petitioner. Moreover, what also reflects is that there is no averment in the impugned order so far as the excess amount having been paid to the petitioner on account any misrepresentation or fraud played by the petitioner. Undisputedly, from the impugned order itself it reveals that the excess payment has been paid to the petitioner with effect from 1.4.2006 so far as time scale is concerned and 3.10.2008 so far as the benefit of two increments is concerned, which prima facie shows that erroneous payment has been made almost about 10-12 years prior to the date of recovery being sought for.

7. Given the aforesaid factual matrix of the case, it would be relevant at this juncture to recall the situations which have been reflected by the Hon'ble Supreme Court in the case of **State of Punjab and Others v. Rafiq Masih (White Washer) and Others, 2015 (4) SCC 334**, wherein it has been held in paragraphs 11 & 12 as under:-

“11. Recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

12. xxx xxx xxx

- (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.”

8. In the light of the aforesaid observations/ratio of law laid down by the Hon'ble Supreme Court in the aforesaid judgment and also considering the factual matrix of the case particularly the fact that erroneous payment has been made about more than 10 years prior to the date of recovery and the

petitioner not being at fault for the receipt of the said excess payment, the recovery of the same deserves to be held as impermissible under law and the writ petition therefore deserves to be allowed and the impugned order of recovery deserves to be set aside/quashed. It is ordered accordingly.

9. The writ petition stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/