

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 6996 of 2018

Smt. Sangita Mishra W/o Late Shri Baldau Prasad Mishra, aged about 55 years, R/o Mahamaya Para, Ward No. 15, Simga, District Baloda Bazar, Bhatapara (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.).
2. Branch Manager, Allahabad Bank, at Branch Office, Tilda Road, Simga, District Baloda Bazar – Bhatapara (C.G.).

---Respondents

For petitioner	:	Shri Ajay Shrivastava, Advocate.
For State	:	Shri Dheeraj Wankhede, GA.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/10/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/1 dated 01/10/2018 whereby the respondents have issued an order of recovery from the pension payable to the petitioner to the tune of Rs.3,69,486/- against which certain deductions have already been made and further deduction is ordered to be made from the monthly pension payable to the petitioner.
2. The facts of the case is that, the husband of the petitioner who was working as a Headmaster in the Education Department retired from service on 30/06/2010. Thereafter, the said employee expired on 12/06/2012.

3. Subsequent to his death, the pension and pensionary benefits has been extended to the petitioner through the respondent No.2-Bank.

4. Abruptly, now vide the impugned order by the respondent No.2 it has been intimated that the petitioner has been wrongly paid certain excess payment from June-2015 onwards and it was assessed at Rs. 3,69,486/-.

5. It is this action on part of the respondents in recovering this amount which is under challenge in the present Writ Petition.

6. The contention of the counsel for the petitioner is that, the order of recovery issued by the respondents is bad in law for the reason that, the same could not have been recovered from the petitioner as the petitioner was not responsible for the alleged excess payment made if any, neither has the petitioner at any point of time made any false representation or played fraud in obtaining the excess payment paid to the petitioner. He further relied upon the judgment passed by the Hon'ble Supreme Court in the case of **State of Punjab and Ors. etc. v. Rafiq Masih (White Washer) etc.** [2015 AIR SCW 501].

7. The State counsel however opposing the petition submits that, the primary grievance of the petitioner is that of violation of principles of natural justice however according to the State counsel, no fruitful purpose would be served if notices would had been issued for the reason that, the finding is of wrong fixation and which is only been corrected and whatever excess payment made has to be recovered. It is well within the domain of the

respondents as there is also an undertaking given by the parties while releasing all pension and pensionary dues.

8. Having heard the contentions put forth on either side and on perusal of record, it would be relevant to take note of the legal position as it stands.

9. The issue involved in the case so far as recovery is concerned is no longer res integra. It has already been settled by the Supreme Court in series of decision right from 1995 SCC, Supl. (1) 18 JT 1995 (1) 24 in the case of **Sahib Ram Vs. The State of Haryana and Others** to the most recent case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc . reported in 2015 AIR SCW 501.**

10. The Hon'ble Supreme Court has laid down broad guidelines, in respect of the situations under which the recovery can be made. The relevant portion of judgment in case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** is reproduced 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."

11. In view of the above authoritative decision of the Supreme Court, this Court is of the opinion that the grievance of the Petitioner seems to fall squarely within the situations and guidelines narrated in the Judgment of Rafiq Masih (Supra). The Petition thus deserves to be allowed.

12. Indisputably the wrong fixation if at all has been made was at the behest of the Respondents. The Petitioner cannot be blamed for that in any manner. There is no allegation of mis-representation or fraud played by the Petitioner in receiving the excess payment which has been made. Under such circumstances all that the State can do is rectification of the error that has occurred. The State does not have power to recover the amount which has already been paid to the employees on account of the fault of the officers of

the respondents and which has also been consumed by the petitioner in due course of time.

13. Thus, the impugned order dated 01.10.2018 stands quashed so far as the recovery is concerned. It is further directed that the amount recovered, if any, by the Respondents shall be refunded back to the Petitioner forth with.

14. It is made clear that quashing of order of recovery does not preclude the Respondents from making rectification of the erroneous fixation of pension made to the Petitioner.

15. With the aforesaid observation the Writ Petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit