

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 7080 of 2018**

Vijay Kumar Namdev S/o Late Shri Sundarlal Namdev Aged About 45 Years Working As Assistant Teacher And Posted At Govt. Primary School Vidya Mandir, Gatouri (Semartal) Bilaspur, District- Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya New Raipur, District- Raipur, Chhattisgarh.
2. District Education Officer Bilaspur, District- Bilaspur, Chhattisgarh.
3. Head Master Govt. Primary School Vidya Mandir, Gatouri (Semartal) Bilaspur, District- Bilaspur, Chhattisgarh.
4. President Vidya Mandir Samiti, Office At Govt. Primary School Vidya Mandir, Gatouri (Semartal) Bilaspur, District- Bilaspur, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Mr. Dheeraj Wankhede, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****27/10/2018**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 28.09.2016.
2. Vide the said order, the respondents have ordered for recovery of an amount of Rs.1,49,380/- from the salary of the petitioner. The said excess payment has been on account of erroneous fixation made by the respondents for the period between 01.07.2013 to 31.08.2015.
3. The contention of the counsel for the petitioner is that the case of the petitioner is squarely covered by the judgment of the Hon'ble Supreme Court in case of ***"State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc."*** reported in ***2015 AIR SCW 501***

in as much as the petitioner falls under the various situations which have been mentioned by the Hon'ble Supreme Court in its order and therefore the impugned order is liable to be quashed.

4. Mr. Wankhede appearing for the State opposing the petition submits that it is only a recovery which is being made while in service and the recovery also cannot be said to be an old recovery, it is a recovery within 5 years from the date of recovery and therefore it would not fall under any of the situations which are mentioned by the Hon'ble Supreme Court. Moreover the petitioner is still in employment and the excess payment has been on account of wrong fixation i.e. the amount of money which he was not otherwise entitled for has been paid to him and which has been recovered by the respondents vide the impugned order.
5. Given the aforesaid factual matrix of the case what is admitted is the fact that the petitioner admittedly is a class-III employee and that the amount of excess payment was not paid to the petitioner on account of any misrepresentation or fraud played by the petitioner, but it has been paid to the petitioner on account of the error on the part of the department. Moreover the petitioner must have already utilized the said amount ignorant of the fact that it has been paid to him in excess.
6. At this juncture, it would be relevant to take note of the judgment of the Hon'ble Supreme Court in the case of "Rafiq Masih" (supra) wherein the Hon'ble Supreme Court has narrated certain situations under which the recoveries have been held to be impermissible under 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.”

7. Consideration of those situations referred to herein above would clearly reflect that it would also attract the case of the petitioner as the petitioner is a class-III employee and secondly the petitioner was not responsible for the said excess payment made to him and moreover the excess payment was made about more than 3 years prior to the issuance of the order of recovery.
8. Given the said facts, this Court is of the opinion that the writ petition deserves to be and is accordingly allowed. The impugned order therefore is set-aside/quashed. The petitioner would be entitled for refund of those amounts, which have already been recovered by the respondents till now.
9. The writ petition thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge