

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 8241 of 2018**

Dharamlal Dibya S/o Shri Heeraram Ji Dibya Aged About 64 Years Retd. Headmaster, R/o Village Dhangaon, Post Rasouta, Tahsil Pamgarh, District Janjgir Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary School Education Department, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Joint Director Treasury Account And Pension, Bilaspur, District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
3. District Education Officer Janjgir Champa, District Janjgir Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
4. Block Education Officer Pamgarh, District Janjgir Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- **Respondents**

For petitioner	:	Shri K. S. Pawar with Ms. Preeti Yadav, Advocates.
For State	:	Shri Dhiraj Wankhede, GA

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/12/2018

1. The challenge in the present writ petition is to the order dated 20/09/2017 Annexure (P-1) whereby the respondents have ordered for recovery of an amount of 2,22,430/- Rs. from the retiral dues payable to the petitioner.
2. Counsel for the petitioner submits that petitioner has retired from service as a Head Master, Government Primary School, Pamgarh w.e.f. 30/06/2017. While settling the retiral dues, the respondents found that petitioner was given an erroneous fixation by April, 1999 onwards which he continued to get till his date of retirement and the excess amount paid was of Rs. 2,24,430/-.
3. According to the petitioner after he had retired and he was expecting his retiral dues, the respondents issued impugned order and forced the petitioner to deposit the said amount or else the department would not have released his retiral dues including pensionary benefits. According to

the petitioner the said action on the part of the respondents is bad in law and is squarely covered by the decision of the Supreme Court in the case of State of Punjab Vs. Rafiq Masih and others[2015(4) SCC 334]. It was also contention of the petitioner that the said erroneous excess payment paid to the petitioner was not on account of any misrepresentation which the petitioner has made or on account of fraud which the petitioner has played rather it is the case where the erroneous payment was made on account of fault on part of the officers of the respondent.

4. On the other hand, State counsel opposing the petitioner states that the said erroneous payment has been detected only while settling the retiral dues and therefore immediate steps were taken for recovery, the excess payment paid. He further contended that the petitioner has also voluntarily deposited the entire amount and as such he cannot now challenge the same before this Court. He further submits that since entire excess amount has already been recovered and retiral dues has also been paid, there is no grievance left to be considered for this Court. Thus prayed for the rejection of the writ petition.
5. Having heard the contention put forth on either side and perusal of the records, it would be relevant at this juncture to refer to the judgment of the Supreme Court in the case of Rafiq Masih(Supra). In the said case the Supreme Court has narrated certain situations under which the recoveries are being held to be impermissible under law. For ready reference the situations as reflected herein under :-

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D').

(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."

6. The plain perusal of the situations narrated by the Supreme Court where the recoveries have been held to be impermissible would reveal that the case of the petitioner also fails in almost all those situations. The petitioner stands retired from service, the excess amount was paid long ago, when the petitioner was in service, the said payment was received by the petitioner not on account of any fraud or misrepresentation made by the petitioner. With the aforesaid situations this Court has no hesitation in holding that the impugned order Annexure P-1 in the light of the judgment of Supreme Court in the case of Rafiq Masih (Supra) is impermissible under law and therefore deserves to be and is accordingly set aside/quashed.
7. It is ordered that the amount paid by the petitioner to the respondents as per Annexure (P-1) be immediately refunded back to the petitioner at the earliest preferably within a period of three months from the date of receipt of copy of this order.
8. Accordingly, the writ petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE