

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 147 of 2019**

Smt. Vandana Jha W/o Hitendra Jha, aged about 51 years, working as Principal and posted at Govt. Higher Secondary School Lakholigram, District Rajnandgaon (C.G.).

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, Department of School Education, Mantralaya, Mahanadi Bhawan, Raipur, Chhattisgarh.
2. Director, Public Instruction, Raipur, District Raipur (C.G.).
3. The Joint Director Treasury and Pension, Durg Division, Durg, District Durg (C.G.).
4. District Education Officer, Rajnandgaon, District Rajnandgaon (C.G.).

----Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate.
For State	:	Ms. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/01/2019**

1. Aggrieved by the decision of the State Government initiated recovery proceedings against the petitioner dated 31/08/2018, the present Writ Petition has been filed.
2. Vide Annexure-P/1, the respondents have decided to recover an excess payment made to the petitioner to the tune of Rs. 93,988/- and the excess payment is reflected to have been made to the petitioner for the period between 01/07/2006 to 01/07/2016.
3. The record show that, though the excess payment has been calculated for the aforesaid period, but the arrears of payment was infact paid to the petitioner between 01/07/2012 to 30/06/2018.
4. The contention of the counsel for the petitioner is that, the said recovery order is per-se bad in law for the reason that, firstly, 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** specifically has held that such recovery is impermissible under law. He further contended that, the petitioner has not been afforded any opportunity of hearing before the recovery notice was issued. He further submits that, there is no misrepresentation or fraud played by the petitioner for obtaining the said fixation of pay. He further contended that, even if it is an excess payment, the said payment is made for the period in excess of 5 years from the date of issuance of the order of recovery.

5. The State counsel however opposing the petition submits that, it is a case where the erroneous pay has been detected while the petitioner is in service itself. She further submits that, the petitioner as on date is working as a Principal of the Government Higher Secondary School as such is a class-II officer and therefore also the judgment of Rafiq Masih (Supra) should not be applied in the instant case. Moreover, she contended that, the excess payment has been made recently and therefore the Writ Petition does not warrant any interference and thus prayed for rejection of the same.
6. Having heard the contentions put forth on either side and on perusal of record what is undisputed is the fact that, it is not the case of the respondents that the petitioner had made some misrepresentation for obtaining the alleged erroneous fixation. It is also not the case of the respondents that the excess payment was for the period between 01/07/2006 to 01/07/2016. Even if the contention of the State counsel is that the recovery made is of excess payment made was in the

recent past it definitely was of a period beyond 5 years from the date of recovery as the arrears excess payment was made first on 01/07/2012.

7. At this juncture it would be relevant to refer to the judgment of 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**. The Hon'ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery is totally impermissible under law. The situations as envisaged in the said judgment are as under :

"(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. Perusal of these situations it would reveal that, the excess payment in the instant case has been made from 2012 onwards i.e. much before 5 years from the date of issuance of recovery order.
9. As such, the order of recovery issued by the respondents would get hit by the order of the Supreme Court in the case of Rafiq Masih

(Supra).

10. Moreover, it is also a case where there was no misrepresentation made by the petitioner, nor has he been taken into confidence before the recovery order was issued against him.

11. For all the aforesaid reasons, the impugned order is not sustainable and the same deserve to be and is accordingly set-aside/quashed.

12. If any amount has been recovered, the same has to be refunded back to the petitioner forthwith.

13. The Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
Judge

Sumit