NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 176 of 2019

Mannulal Soni S/o Late Shri Milap Singh Soni, aged about 63 years, retired Lecturer, R/o Ratnabandha Road, Hatkeshwar Naka, Dhamtari, District Dhamtari (C.G.).

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, School Education Department, Mantralaya, Mahanadi Bhawan, Raipur, Chhattisgarh.
2. Director, Public Instruction, Raipur, District Raipur (C.G.).
3. The Joint Director Treasury, Account And Pension, Durg, Chhattisgarh.
4. Principal, Govt. Higher Secondary School Arkar, District Balod (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

11/01/2019

1. The challenge in the present writ petition is to Annexure P/1 dated 17/08/2017 whereby the respondents have issued an order of recovery of Rs.1,02,779/- from the retiral dues payable to the petitioner.

2. The facts of the case is that, the petitioner working as a Lecturer under the respondent No.4 retired from service on 31/08/2017. It is said that while the pension papers were being processed, the authorities found that there were certain wrong fixation given to the petitioner between 22/02/2011 to 30/06/2017. As a consequence of the wrong fixation, the petitioner is said to have paid an excess amount of Rs. 1,02,779/-. It is this amount which has been ordered to be recovered vide Annexure-P/1.

3. The contention of the counsel for the petitioner is that, the impugned order is bad in law for the reason that, the respondents could not have recovered the said amount from the petitioner at the time of his retirement as it has become impermissible under law in the light of the judgment passed by 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.*** He further submits that, it is not a case of the State Government that the said amount has been paid to the petitioner on account of any misrepresentation or fraud played by the petitione rather the fault was on part of the officers of the department. He further contended that, before issuance of the said order also there has been no proper opportunity of hearing given to the petitioner for the same and thus for all these reasons he prayed for quashment of the same.

4. The State counsel however opposing the petition submits that, the impugned order has been passed while the petitioner was in service. She submits that, once when the authorities detected that certain excess payment has been made, appropriate steps was taken for rectification of the same and the excess payment made in the process was ordered to be recovered and hence it cannot be said to be either bad in law, nor can it said to be impermissible. According to the State counsel, in any case, the excess payment made to the petitioner was otherwise that which he was not entitled for under the rules and thus for all this the State counsel prayed for rejection of the Writ Petition.

5. Having heard the contentions put forth on either side and on perusal

of record, admittedly, the petitioner was to retire on 31/08/2017. The impugned order has been passed about 15 days before his retirement. The excess payment has been made more than 5 years earlier to the date of retirement and also the date of recovery i.e. with effect from 22/02/2011 onwards.

6. Moreover, it is not the case of the State counsel that there has been any misrepresentation made by the petitioner for obtaining the said benefit.

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 and when compared to the facts of the instant case it would clearly reflect that the said case squarely

attracted by the aforesaid judgment of the Supreme Court and the impugned order for the same reason becomes impermissible under law and therefore deserves to be and is accordingly set-aside/quashed with consequences to follow.

9. It is submitted that the petitioner at the instance of the respondents has deposited the same as the authorities were not releasing the pensionary benefits.

10. Under the circumstances, the respondents are directed to refund the said amount back to the petitioner at the earliest preferably within a period of 3 months from the date of receipt of copy of this order.

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

Sd/-
(P. Sam Koshy)
Judge

Sumit