

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4903 of 2015**

Rajkumar Sahu S/o Shri Jagannath Prasad Sahu, Aged About 63 Years
Retired Head Master From Govt. Primary School, Kairwarpara
Bodsara, Presently R/o Opposite Gyan Bharti School Gali New
Chandaniyapara Janjgir Block Nawagarh, P.S. Janjgir District Janjgir
Champa Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Department Of Education Mahandi Bhawan, New Raipur Chhattisgarh
2. The Pension Resolve Committee, Through Department Of General Administration Mahanadi Bhawan, New Raipur Chhattisgarh
3. The Director, Public Instruction Chhattisgarh Indrawati Bhawan Raipur, District Raipur Chhattisgarh
4. The District Education Officer, District Janjgir Champa Chhattisgarh
5. The Block Education Oficer, Block Nawagarh, District Janjgir Champa Chhattisgarh
6. The Join Director, Accounts Treasury And Pension, Bilaspur Chhattisgarh

---- Respondents

For Petitioner	Mr. Rakesh Kumar Jha, Advocate
For State	: Mr. Saleem Kazi, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****01.02.2019**

1. The challenge in the present writ petition is to the order passed by the respondent no. 2 i.e. the Pension Resolve Committee, constituted by

the State Government to resolve the dispute raised by the retired employees of the State Government.

2. The whole grievance revolves around the action of recovery of an amount of Rs. 1,61,243/-. Present is a second round of litigation. The first round of litigation was WPS No. 1467 of 2015 which stood disposed off on 28/04/15 wherein this Court, after quashing the order of recovery, had ordered the case of the petitioner to be scrutinized by respondent no. 2 Committee and the Committee, on verification of record, to pass a fresh order. Subsequently, the Committee passed an order on 26/08/15 which was communicated to the petitioner vide Annexure P-1 dated 29/10/15 leading to the filing of the present writ petition.
3. From perusal of the record, it reveals that the petitioner working as a "Headmaster Primary School" stood retired on 31/03/13. It is subsequent to the petitioner's retirement, when the retiral dues were being calculated, the respondents issued the petitioner with a notice (Annexure P-2) whereby a communication was made by the "Office of the Joint Director, Accounts Treasury and Pension, Bilaspur Division stating that the petitioner has been erroneously paid the benefit of first Krammonati as well as second krammonati ahead of time and as such, there is an excess payment made to the petitioner which deserves to be recovered. Subsequently, the respondents passed an order on 29/06/13 holding that the petitioner has been paid Rs.1,61,243/- as excess payment because of the wrong fixation granted to the petitioner and it was ordered to be recovered. This decision of the State Government is under challenge and which has

also been affirmed by the Committee i.e. respondent no. 2 vide Annexure P-1 dated 29.10.2015.

4. The basic issue for consideration is whether the respondents could have initiated recovery proceeding against the petitioner after his retirement particularly in respect of certain payment which was made to the petitioner erroneously (if at all) by the respondents.
5. What also needs to be considered is that whether the petitioner has played any fraud with the department for the purpose of getting the alleged erroneous excess payment.
6. The Supreme Court, in the case of **“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”** reported in **2015 AIR SCW 501**, in very categorical terms had laid down certain situations where it has been held that recoveries in such situations would not be permissible in law. The situations so enumerated in the above mentioned case 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.”

7. The plain reading of the situations so mentioned by the Supreme Court when compared to the facts of the present case, it would clearly reflect that the case of the petitioner also squarely fits to these situations which would make the recovery against the petitioner also impermissible under law. Some of the situations which could come to the aid of the petitioner when he stood retired from service on 31/03/13 are; The notice of recovery has been issued subsequent to his retirement. The alleged excess payment has been made to the petitioner in the year 1986 i.e. more than 25 years prior to the petitioner being retired from service. Further, it is not the case of the respondents that the petitioner has made any misrepresentation for the purpose of getting the said excess payment, and it also appears that the petitioner at the time of retirement was a Class III category employee.
8. Given the aforesaid factual matrix of the case, this Court has no hesitation in reaching to the conclusion that the said recovery action initiated by the respondents is bad in law and in the light of the judgement of the Supreme Court, in the case of **Rafiq Masih** (supra), it is rather impermissible under law.
9. Thus, the order of the Committee i.e. respondent no. 2 (Annexure P-

1) and the earlier decision of the State Government (Annexure P-4) dated 29/06/13 stands set aside/quashed. In case, if any deductions have been made, the same should be immediately refunded to the petitioner. It is also made clear that in case the petitioner has not been paid his retiral dues, the department should forthwith process the same and the payment should be released if he is entitled for the same within a period of 90 days from the date of receipt of the copy of this order.

10. The writ petition accordingly stands disposed off.

**Sd/-
P. Sam Koshy
Judge**