

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 611 of 2019**

Poonam Deshmukh W/o Shri Dhanush Singh Deshmukh Aged About 58 Years R/o Zen 18 Ganpati Vihar Potiya Road Bhilai 1, Ward 51, District - Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Higher Education Mahanadi Bhawan, Mantralaya Post And Police Station Mandir Hasaud, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Joint Director Treasury, Accounts And Pension Durg Chhattisgarh., District : Durg, Chhattisgarh
3. Principal Government Adarsh Girls High Secondary School, District - Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Aditya Tiwari, Advocate
For State	:	Ms. Astha Shukla, PL

Hon'ble Shri Justice P. Sam Koshy
Order on Board

30/01/2019

1. The challenge in the present writ petition is to the order (Annexure P-1) dated 06/08/2018. Vide impugned order the respondents have held that the petitioner had been wrongly granted annual increment w.e.f. 01/04/2006 whereas it ought to had been w.e.f. 01/07/2007. This error now having been detected, the respondents have ordered for recovery of excess payment made to the petitioner.
2. Counsel for the petitioner submits that right from 2006 till 2018 that is for a period of well over 12 years the respondents failed in detecting the said error. He further contended that the petitioner also is not in any manner responsible for receiving the said erroneous payment if any. He further submits even otherwise recovery under such circumstances has been clearly held to be impermissible under law

by 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**, Thus, prayed for quashment of the impugned order.

3. State counsel however, opposing the petition submits that the petitioner is still in service it is only now while scrutinizing the respondents have found out that the petitioner has been wrongly granted an annual increment w.e.f 01/04/2006 instead of 01/07/2007 and respondents have therefore issued the order for rectification as well as for recovery of the excess payment made.
4. So far as the recovery part is concerned this Court has no hesitation in holding that since the said annual increment/ erroneous payment to the petitioner w.e.f. 01/04/2006 was not on account of any misrepresentation on the part of the petitioner and the fact that the said payment has been by now been made for period of well over 5 years of time. The case of the petitioner as far as the recovery part is concerned is squarely covered by the decision of the Supreme Court in the case of **Rafiq Masih**(Supra). So far as the rectification part is concerned this Court again is of the opinion that since impugned order has been passed without affording any opportunity of hearing and the same is therefore unsustainable. So far as the rectification is concerned also the impugned order stands set aside/quashed with liberty of reviewing it. It is open for the respondents to pass a fresh order in case if they feel so after granting opportunity of hearing to the petitioner seeking his explanation on the issue. It is made clear that the said settlement on dispute so far as the rectification on the erroneous fixation is concerned should not come in the way of the petitioner's application for voluntary retirement.

5. Accordingly the writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Rohit