

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3419 of 2019

Dalu Ram Kothari S/o Late Shri Kartik Ram Kothari, Aged About 65 Years
Lecturer, Government Middle School, Beeja - Bhata Tahsil Dongargaon,
District Rajnandgaon Chhattisgarh. ---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, School Education Department Ministry, Mahanadi Bhawan, Police Station New Raipur Chhattisgarh.
2. President Pension Nirakaran Samiti, Secretary, General Administration Deptt. Ministry , Police Station Rakhi, Mahanadi Bhavan, New Raipur Chhattisgarh.
3. Divisional Joint Director, Kosh, Lekha And Pension, Durg Chhattisgarh.
4. Pracharya, Government Uchha Madhyamik Shala, Bijebhatha, Block Dongargaon Police Station Lal Bagh, District Rajnandgaon Chhattisgarh

---Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Mr. Ishan Verma, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/05/2019

1. The challenge in the present writ petition is to the impugned order Annexure P-5 dated 15.10.2015 passed by the respondents for recovering an excess amount of Rs. 1,71,164/- that is alleged to have been paid to petitioner.
2. The present case is the second round of litigation. Immediately after the impugned order Annexure P-5 dated 15.10.2015 was passed, the petitioner had filed WPS 2647 of 2015 and the said writ petition stood disposed of on 27.07.2015. Ordering the placement of the case of petitioner before the High Powered Committee constituted by the State Government to deal with the dispute pertaining to the retiral and pensionary benefit. The said committee after due consideration has passed the impugned order

Annexure P-2 dated 28.01.2016. The committee reached to the conclusion that since there was an excess payment made to the petitioner on account of erroneous fixation of pay, the same had to be recovered from the petitioner and accordingly the committee recommended for adjusting the excess payment from the dues payable to the petitioner and for releasing the balance of amount.

3. The department thereafter is said to have recovered the amount of Rs. 1,71,164/- from the gratuity amount payable to the petitioner and released the balance of gratuity amount, it is these actions which are under challenge in the present writ petition.

4. The contention of the petitioner is that there is no fault on the part of the petitioner so far as the excess amount that he has received and therefore it could not be recovered from the petitioner. It is also the contention of the petitioner that after having erroneously paid the said benefit to the petitioner, the department now can not initiate the recovery proceedings for the same when the petitioner already had received the same and enjoyed also the same benefit bonafidely.

5. The further contention of the petitioner is that the department also does not take the stand of the petitioner being responsible in any manner for the erroneous fixation of pay.

6. The Counsel for the petitioner relied upon the judgment of 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**. to contend that the alleged excess payment made to the petitioner now can not be recovered as it has become impermissible under law .

7. The State Counsel however opposing the petition submit that it is a case where the present writ petition has been filed after more than 3 years from the date the committee had taken a decision for adjustment of the excess payment made to the petitioner from his retrial dues and therefore the petition deserves to be rejected on the ground of delay.

8. The State Counsel further submits that once when the State Government has detected the error in granting the proper fixation to the petitioner. The department had all the rights for recovering the excess payment so made on account of erroneous fixation of pay granted. Thus, prayed for the rejection of the writ petition.

9. Having heard the contention put forth on either side and on perusal of records, what admittedly stands established is that the erroneous fixation of pay was given to the petitioner long ago and that it is not the case where the erroneous has been paid in the recent past. It is not the case of the respondent where the petitioner was in any manner responsible for the erroneous excess payment, if at all, if the petitioner has received. The petitioner stood retired from service with effect from 31.03.2015 from the post of lecturer

10. The Supreme Court in the case of **Rafiq Masih (Supra)** has envisaged certain situations under which the recovery was held impermissible under law. Some of the situations, which could be made applicable so far as the case of the petitioner is concerned, are:-

(a) The recovery can not be made from the retired employee.

(b) The recovery can not be made in respect of certain amount which has been erroneously paid

to the employee, five years prior to issuance of order of recovery. Recovery cannot be made against the person who is not in any manner responsible for the said erroneous fixation of pay.

11. Given the aforesaid facts of the case , the impugned action on the part of the respondents in initiating the recovery of an amount of Rs. 1,71,164/-from the retrial dues payable to the petitioner is held to be bad in law and is also impermissible under law.

12. In the light of 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**, the impugned action thus is set aside / quashed. Respondents are directed to forthwith refund the recovered amount of Rs. 1,71,164/- at the earliest preferably within a period of 4 months from the date of receipt of copy of this order.

13. The writ petition accordingly stands allowed and disposed of.

Sd/-

(P. Sam Koshy)
Judge

jyoti