

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 4324 of 2019

Smt. Chhaman Devi Deshmukh W/o Shri Chandrika Prasad Deshmukh
Aged About 62 Years Retired Head Master Govt. Primary School
Sadarbazar Rajnandgaon, District Rajnandgaon Chhattisgarh, R/o Ward
No. 42, Rani Sagar Marg, Basantpur, Rajnandgaon, Tahsil - Rajnandgaon,
District Rajnandgaon Chhattisgarh.

---- Petitioner(s)

Versus

1. State of Chhattisgarh Through Its Secretary, Department of School Education, Mantralaya, Mahanadi, Bhavan, Naya Raipur Chhattisgarh.
2. Joint Director Kosh, Lekha And Pension Durg Chhattisgarh.
3. Collector (Kosh Shakha), Rajnandgaon Chhattisgarh.
4. Block Education Officer Rajnandgaon, District Rajnandgaon Chhattisgarh.

---Respondents

For Petitioner	:	Shri Rakesh Thakur, Advocate.
For Respondent-State	:	Shri Ishan Verma, Panel Lawyer.

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

19.06.2019.

1. Challenge in this petition is to the order dated 18.02.2019. Vide the said order, the respondents have initiated a recovery proceedings against the petitioner for an amount of Rs.79,432/-.
2. The contention of the petitioner is that the impugned recovery order is bad in law for the reason that the said recovery otherwise is impermissible under law. According to him, the said recovery is made on account of some alleged erroneous fixation of pay which was given to the petitioner way back in December, 1998 onwards. The petitioner, in any manner, is not responsible for the alleged erroneous fixation. Neither has she made any misrepresentation or played fraud for obtaining the said excess payment. The said order

is also bad in law in the light of the decision of the Supreme Court in case of ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. reported in 2015 AIR SCW 501.***

3. The State counsel on the contrary trying to justify the decision submits that after the petitioner having retired from service and when settlement of dues were being made it was detected that the petitioner has been erroneously granted wrong fixation of pay in December, 1998 and on account of which she has been paid excess payment of Rs.79,432/-. He further submits that the petitioner otherwise was not entitled for receiving the said amount and therefore the department had no other option but to recover the excess amount from the dues payable to the petitioner on her retirement.
4. Having heard the contentions put forth on either side and on perusal of records, it would be necessary at this juncture to refer to the judgment of Supreme Court in case of Rafiq Masih (Supra). In the said judgment, the Supreme Court has given certain situations under which the recovery has been totally held to be impermissible under the law. Some of the situations are as under:

“11. Recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially

dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

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- (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."

5. Perusal of undisputed facts of the present case would reveal that the order of recovery has been issued after the retirement of the petitioner. The petitioner stood retired from service on 30.11.2018. The alleged excess payment has been given to the petitioner way back in the year, 1998 onwards i.e. about 20 years prior to the order of recovery being issued. The petitioner at no point of time played

any fraud or made any misrepresentation for getting the same. Moreover, the post which the petitioner was holding was that of a Class-III category.

6. All the aforesaid admitted factual matrix would make the order of recovery to be impermissible under the law. The impugned order of recovery therefore deserves to be and is accordingly set aside/quashed.
7. Needless to mention that this court has only quashed the recovery proceedings initiated by the respondents. The respondents would have every right for rectifying the error without initiating any recovery proceedings against the petitioner.
8. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder