

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4622 of 2019**

Ganesh Prasad Agrawal S/o Shri Kunj Bihari Lal Agrawal Aged About 64
Years R/o Village Pendra, Tahsil Pendra, District Bilaspur Chhattisgarh.,
District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Tribal Welfare, Mahanadi Bhawan, Atal Nagar, District Raipur Chhattisgarh.,
District : Raipur, Chhattisgarh
2. Commissioner Department Of Tribal Welfare, Raipur Chhattisgarh.,
District : Raipur, Chhattisgarh
3. Assistant Commissioner Department Of Tribal Welfare Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
4. Block Education Officer Tribal Block - Pendra District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
5. Joint Director Accounts, Treasury And Pensoin, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Yogendra Chaturvedi, Advocate
For State	:	Mr. Sameer Behar, PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****26/06/2019**

1. The challenge in the present writ petition is to the order Annexure P-1 dated 25.04.2019. Vide the said impugned order the respondent have passed an order of recovery against the petitioner for an amount of Rs. 3,46,112/-. The petitioner had retired from service of the respondent on the post of Head Master w.e.f. 30.09.2018.
2. The contention of the petitioner is that the order of recovery issued against the petitioner is totally bad in law in as much as the petitioner

has not been taken into confidence before the impugned orders were passed. It is also the contention of the petitioner that petitioner as such was never responsible for the excess amount if any received by the petitioner. It is further contention of the petitioner that since petitioner had already retired from service, subsequent order of recovery becomes impermissible under law. More particularly when excess amount has not been paid to the petitioner on account of any fraud or misrepresentation played by the petitioner. Further contention of the petitioner is that the impugned order of recovery is also in violation of 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***. Thus prayed for quashment of the same.

3. Counsel for the State on the other hand submits that since the petitioner have been paid something in excess of what he was not otherwise legally entitled for, the department after their retirement during the course of settlement of the dues found that they have been given certain erroneous fixation of pay and therefore the respondents are justified in initiating the recovery proceedings.
4. Having heard the contentions put forth on either side and on perusal of records, undisputedly, the petitioner stood retired on the post of Head Master w.e.f. 30.09.2018. The alleged excess payment has been made to the petitioner during the period between July, 1974 to September, 2018. The impugned order has been passed after considerable period of petitioner having retired. There is no allegation of the petitioner having made any misrepresentation or played fraud in obtaining the same.

5. At this juncture, it would be relevant to refer to the situations narrated by the Supreme Court in the case of **Rafiq Masih(Supra)** whereby the recovery have been held to be impermissible under law :-

“(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.”

6. Plain perusal of the undisputed facts of the case with the situations narrated in the preceding paragraphs, this Court is of the opinion that recovery in the instant case is hit by the judgment of the Supreme Court in the case of **Rafiq Masih(supra)** and the same is not sustainable as recovery in the instant case also becomes impermissible under law. The writ petition accordingly stands allowed and the impugned order Annexure P-1 to the aforesaid extent stands set aside/quashed.
7. In case if the respondent intends to bring any change to the service benefits payable to the petitioner, the respondent can act upon it only after an opportunity of hearing is afforded to the petitioner in this

regard, even if it is in respect of rectification of the pay scale or the pension payable to the petitioner.

8. With the aforesaid observation, the writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Rohit