

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 6852 of 2019**

- Samphu Ram Jangde S/o Shri Chandwa Ram Jangde Aged About 63 Years R/o Village Bartunga, Post Bhedvan, Tahsil Sarangarh, District : Raigarh, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, New Raipur Chhattisgarh
2. The District Education Officer Jashpur, District : Jashpur, Chhattisgarh
3. The Principal Govt. Higher Secondary School Bachharaon, Tahsil And Block Bagicha, District : Jashpur, Chhattisgarh
4. The Joint Director Treasury, Account And Pension, Ambikapur District Sarguja Chhattisgarh

---- Respondents

For Petitioner : Shri Manoj Chauhan, Advocate

For Respondents/State : Shri Avinash Singh, PL

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****08/11/2019**

1. The petitioner has joined as Head Master and retired served and at the time of retirement, he was working as Head Master at Government Higher Secondary School, Bachharaon, Tahsil and Block – Bagicha, District – Jashpur.
2. The petitioner stands retired on 31.01.2017, a recovery notice was served to the petitioner on the ground that excess payment

of Rs.3,22,937/- has been made.

3. Learned counsel for the petitioner submitted that the petitioner has served as a teacher and the payment of salary has not been made on any misrepresentation or any fraud committed by the petitioner and without giving any opportunity of hearing, the recovery notice has been issued.
4. According to the petitioner, the said recovery is also impermissible in the light of the judgment of the Hon'ble Supreme Court in the case of ***“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”*** reported in ***2015 AIR SCW 501***.
5. The reply of the State has not been filed despite an opportunity granted.
6. Perused the recovery notice (Annexure-P1). On perusal of Annexure-P1, only postulate that an excess payment of Rs.3,22,937/- has been made. Admittedly, there has been no inquiry conducted and the Annexure-P1 is supported within additional documents to show for which the alleged recovery is sought to be made.
7. At this juncture it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***“Rafiq Masih”*** (supra). The Hon'ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery is totally impermissible under law. The situations as envisaged in the said judgment 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."

8. If we consider the situations, under which the Hon'ble Supreme Court has held recoveries to be impermissible under law and compare the facts of the present case, it would clearly reflect that the case of the petitioner would squarely fall within the situations as envisaged in the judgment of the Hon'ble Supreme Court in the case of "**Rafiq Masih**" (supra).
9. The impugned order Annexure P/1, in the light of the aforesaid judgment of the Hon'ble Supreme Court is unsustainable as the recovery is impermissible under law and the same is bad in law and deserves to be and is accordingly set-aside/quashed.
10. It has been informed by the petitioner that the entire amount has been deducted from the gratuity fund of the petitioner after his retirement.
11. Given the said submissions it is ordered that since the order of recovery is impermissible under the law, the petitioner would be entitled for the entire refund of the total amount of Rs.3,22,937/-.
12. Given the said facts and circumstances of the case, this Court is of the opinion that since the action of the recovery is held to be

bad, the respondents are directed to immediately release the entire amount recovered forthwith to the petitioner within an outer limit of 90 days from the date of receipt of the copy of this order.

13. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge