

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS. No. 7149 OF 2019**

Banshilal Baghmar S/o Late Shri Ramcharan Baghmar Aged About 54 Years Working As Lecturer And Posted At Government High School Urla, District- Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya New Raipur, District- Raipur, Chhattisgarh
2. Director Directorate Of Chhattisgarh Public Instruction Raipur, Naya Raipur, Chhattisgarh
3. Joint Director Office Of Treasury Account And Pension, Raipur, District- Raipur, Chhattisgarh
4. Block Education Officer Block Dharsiwa, Raipur District- Raipur, Chhattisgarh.

---Respondent(s)

For Petitioner	:	Mr. Ajay Shrivastava, Adv.
For State	:	Ms. Sunita Jain, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11.09.2019**

1. The challenge in the present writ petition is to the order of recovery which has been endorsed in the service record of the petitioner on 06.07.2017. The ground of challenge endorsed which to the extent has been recently given the benefit of time pay-scale / Karmonnati w.e.f. 20.09.1998 which the respondents have now deducted from the monthly salary of the petitioner from the salary paid in the month of June in 2019 onwards @ 3000/- Rs. per month, the total excess amount allegedly made to the petitioner was Rs. 108878/-.
2. The contention of the petitioner is that the erroneous fixation of pay could not have been firstly recovered nor rectified by the respondents without affording opportunity of hearing to the petitioner. Particularly, the petitioner has been enjoying the same since July 1998 onwards i.e. about 20 years ago.

3. The further grievance of the petitioner is that the recovery under any circumstances is impermissible in view 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**.
4. It was contended by the petitioner that at no point of time, he was blamed for said erroneous fixation given by the respondents. Thus, prayed for quashment of the action of the respondent.
5. The State Counsel on the contrary opposing the petition submits that it is a case where the respondents have recently detected that there was some erroneous time pay scale granted to the petitioner in July, 1998 and since, this has been detected now the respondents have taken steps for recovery of the excess amount allegedly made for rectification of pay-scale and for recovery of alleged excess amount made. Thus, prayed for dismissal of the writ petition on the ground that the respondents have all the powers for correcting errors so crept in the course of granting time pay scale to the petitioner.
6. Having heard the contentions put forth on either side and on perusal of records, what is an undisputed fact, is that the petitioner has been allegedly paid the benefit of time pay scale about 20 years back i.e. July, 1998 for about 20 years, the petitioner has been receiving the said benefit by the respondents, there is no fault alleged on the part of the petitioner in the said erroneous time pay scale paid to the petitioner.
7. Given the aforesaid facts, if we consider the situations laid down by the Supreme Court in the case of **Rafiq Masih (Supra)** which for ready reference are reproduced hereinunder:-

“(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. The case of the petitioner also falls within those situations stipulated in the judgment of Supreme Court and the impugned action thus is bad-in-law and illegal. The impugned action of recovery thus is set aside/ quashed and if any recovery has been made till now the said recovered amount should be refunded back to the petitioner forthwith.
9. However, the quashment the order of this Court only is confined to the recovery made, the rectification part if any can be carried out by the respondents for which the respondent may grant an opportunity to the petitioner calling upon his explanation so far as erroneous fixation is concerned, then pass a final order.
10. With the aforesaid observation, the writ petition stands allowed and disposed of.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha