

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 7798 of 2019**

Masih Tirkey S/o Shri Ghursai Tirkey Aged About 62 Years R/o Village -
Banshajhal, Post - Bilaspur, Tahsil And P.S. - Batuali, District - Surguja
Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, School Education Department,
Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar Naya Raipur,
District Raipur Chhattisgarh
2. The District Education Officer Surguja, District Surguja Chhattisgarh
3. Block Education Officer Batauli P.S. - Batauli, Janpad Panchayat - Batauli
District - Surguja Chhattisgarh
4. The Divisional Joint Director Treasury Account And Pension Department
Surguja Division Ambikapur, District - Surguja Chhattisgarh
5. The Accounted General Chhattisgarh Zero Point Vidhansabha Raipur,
District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. A. K. Yadav, Advocate
For Respective Respondents	:	Mr. Anshuman Shrivastava, PL & Mr. Rajkumar Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****24/09/2019**

1. With the consent of the parties the matter was heard finally at the
motion stage.

2. The challenge in the present writ petition is to the order Annexure P/1 dated 07.08.2019, whereby the respondents have issued for an order of recovery to the tune of Rs.2,66,279/-.
3. The facts of the case is that the petitioner was working as a Head Master(Primary School) and stood retired on 30/04/2019. Subsequent to the retirement of the petitioner the respondents now after a period of about 4 months have issued an order of recovery i.e. the impugned order dated 07/08/2019. The said excess payment is in respect of erroneous revision implemented in the case of the petitioner w.e.f. 01/07/2007 to 30/04/2019. The contention of the petitioner is that since he retired from the service of the respondents as a Class-III employee and that there is no allegation of any misrepresentation or fraud played by the in getting erroneous fixation of pay. The impugned order of recovery is perse impermissible under law.
4. The contention of the petitioner is that the said order of recovery is per se illegal and impermissible under law 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 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."

6. The State counsel on the contrary opposing the petition submits that it is a case where in course of finalization of the retiral dues certain erroneous payment was given to the petitioner and when it was detected that petitioner was paid wrong fixation w.e.f. 01/07/2007 till 30/04/2019. Immediately steps have been taken for rectification of the error and for recovery of the excess payment made to the petitioner. Thus, it cannot be said to be in any manner bad in law.
7. Having heard the contentions put forth on either side and on perusal of the record it would be relevant at this juncture to refer to the judgment of the Supreme Court in the case of **Rafiq Masih(supra)**. In the light of the aforesaid situations which have been envisaged in the judgment of the Supreme Court in the case of **Rafiq Masih(Supra)**. If we compare the facts of the present case, it would reveal that the petitioner admittedly retired from service as a Class-III employee. The

erroneous payment made to the petitioner for the first time was of a period more than 5 years prior to the order of recovery and also more than 5 years from the date of retirement. There also does not seem to be an allegation of any misrepresentation or fraud played by the petitioner in getting the excess payment on account of wrong fixation.

8. Given the undisputed facts of the case this Court has no hesitation holding that the petitioner's case is squarely covered with the judgment of the Supreme Court in the case of **Rafiq Masih(Supra)** and the impugned order of recovery dated 07/08/2019 therefore deserves to be and is accordingly set aside. It is ordered that the retiral dues payable to the petitioner, if he is entitled for, other than the notice of recovery shall be paid to the petitioner without any further delay.
9. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit