

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 9484 of 2019**

- Pradumman Lal Gupta, S/o Late Laxman Prasad Gupta, Aged About 63 Years, R/o Near Bus Stand, Pratapgarh, Block Sitapur, District Surguja, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhawan, New Raipur, Police Station Rakhi, District Raipur, Chhattisgarh
2. The District Education Officer, Surguja, District Surguja, Chhattisgarh
3. The Block Education Officer, Mainpath, District Surguja, Chhattisgarh
4. The Joint Director, Treasury, Accounts And Pension, Ambikapur, District Surguja, Chhattisgarh

---- Respondents

For Petitioner : Shri Harish Khuntiya, Advocate

For Respondents/ State : Ms. Binu Sharma, P. L.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****21/11/2019**

Heard.

1. By this petition, the petitioner seeks quashment of Annexure P-1, whereby a sum of Rs. 1,71,114/- has been sought to be recovered from him as the same is found to be paid in excess to him. The petitioner claim that he has retired on 31.03.2018 and the impugned notice was served on him after the retirement on 07.08.2019. It is further contended that the payment was

made not because of any fault attributed to the petitioner and over a period of time it is said to be accumulated to the sum of Rs. 1,71,114/-.

2. The petitioner claims he retired as Head master from Government Primary School, Bheltarai, Block Mainpath, District Surguja and the recovery is being made after his retirement.
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. Perused the recovery notice (Annexure-P1). On perusal of Annexure-P1, only postulate that an excess payment of Rs. 1,71,114/- has been made. Admittedly, there has been no inquiry conducted and the Annexure-P1 is supported with additional documents to show for which the alleged recovery is sought to be made.
6. 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."

7. 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).
8. 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.
9. It has been informed by the petitioner that the entire amount has been deducted from the gratuity fund of the petitioner after his retirement.
10. 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. 1,71,114/-.
11. 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.
12. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge