

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.676 of 2021**

Theodor Ekka S/o Late Johan Ekka, Aged About 64 Years R/o Jorajam (Rengle) Post Rengle, Block Bagicha, District Jashpur Chhattisgarh, District : Jashpur, Chhattisgarh

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Education, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. District Education Officer, Ambikapur, District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
3. Principal, Govt. Shyama Prasad Mukherjee College, Sitapur, Block Sitapur, District Surguja (Chhattisgarh), District : Surguja (Ambikapur), Chhattisgarh
4. Joint Director, Treasury, Account And Pension, Ambikapur, Division Surguja, District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- **Respondents**

For Petitioner	:	Mr. Harish Khuntiya, Advocate.
For State/Respondents	:	Mr. Avinash Singh, P. L.

Hon'ble Shri Justice P. Sam Koshy, J**Order On Board****18.02.2021**

1. The challenge in the present writ petition is to the order of recovery initiated by the authorities vide order dated 09.10.2018 (AnnexureP/1), whereby the respondents have ordered for recovering an amount of Rs.2,78,819/- from the retiral dues payable to the petitioner.
2. The facts of the case is that the petitioner was working under the respondents as an Assistant Grade-II under the

Government Shyama Mukherjee Prasad College, Sitapur, Block Sitapur, District Surguja (C.G.) and he stood retired from service w.e.f. 31.03.2018. Till the date of retirement there was no order of recovery issued by the respondents. After more than 7 months from the date of retirement, the respondents have now issued the impugned order Annexure P/1 ordering for recovery of an amount of Rs.2,78,819/- from the retiral dues payable to the petitioner. The said alleged recovery is said to be on the basis of some erroneous fixation of pay made to the petitioner w.e.f. 01.01.2006 to 31.03.2018. According to the petitioner, he is a retired personnel and that there was no misrepresentation or fraud played by the petitioner in receiving the alleged excess payment. That the same has been paid to the petitioner erroneously on account of the fault on the part of the officers in the Department and for which the petitioner cannot be held liable for recovery.

3. According to the petitioner, under the bonafide belief of having received the same justifiably, the petitioner has consumed the same, and now the respondents would not be permitted to recover the same. According to the petitioner, the authorities could have carried out the rectification part, but they could not have initiated any recovery. The further contention of the petitioner is that the impugned order also is bad in law for the reason that the alleged excess payment made to the petitioner is of a

period long back and which makes it impermissible under law for recovery after a considerable period of time in terms of the judgment of the Hon'ble Supreme Court.

4. The State counsel on the other hand submits that the recovery is only in respect of the excess payment made to the petitioner on account of wrong fixation of pay provided to him, which the petitioner was otherwise not legally entitled for and therefore the respondents had all the rights to recover the same.
5. At this juncture, it would be relevant to refer to 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**. 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. 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).
7. From the factual aspect as has been reflected from the pleadings with the writ petition, it is clearly evident that the Petitioner was firstly an employee in the Class-III category and he was to retire on 31.03.2018 and the notice of recovery is much after the retirement and there is no allegation of any misrepresentation of fraud played by by the Petitioner in getting the alleged excess payment. The alleged excess payment was also paid about 12 years before the date of retirement. Hence all these grounds falls within the situations mentioned by the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) and make the recovery impermissible under the law.
8. Given the aforesaid facts and circumstances of the case, the impugned order of recovery (Annexure P/1) dated 09.10.2018 ordering for recovery of an amount of Rs.2,78,819/- is erroneous, bad in law and impermissible

under law and the same deserves to be and is accordingly set-aside/quashed.

9. The respondents are directed to settle the retiral dues of the petitioner without initiating any recovery. It is made clear that the indulgence of this Court is only to the extent of recovery, the respondents would be at liberty to rectify the erroneous fixation provided to the petitioner without making any recovery. If the entire amount has already been deducted by the respondent authorities, the said amount should be forthwith released to the petitioner within an outer limit of 90 days from the date of receipt of the copy of this order.
10. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge