

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 1989 of 2021

1. Krishna Kumar Dewangon S/o Late Shri Samaliyaram Dewangon Aged About 62 Years Retired Head Master, Govt. Middle School, Panchsheel Nagar, Durg, Tahsil and District Durg Chhattisgarh.

---Petitioner(s)

Versus

1. State Govt. of Chhattisgarh Through The Secretary, School Education Department Ministry, Mahanadi Bhawan, Police Station Rakhi, New Raipur Chhattisgarh.
2. Joint Director Kosh, Lekha, Pension, Durg Chhattisgarh.
3. District Education Officer Durg, Chhattisgarh.
4. Block Education Officer Durg, District Durg Chhattisgarh.

---Respondents

For Petitioner	:	Shri Ajay Shrivastava, Advocate.
For Respondent State	:	Shri Jitendra Pali, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08.06.2021

1. Aggrieved by the order dated 23.02.2021 (Annexure P/3) the present writ petition has been filed. The impugned order is an order of recovery to the tune of Rs. 2,92,906/-. The reason for recovery is said to be alleged excess payment made to the petitioner for the period between 01.11.2002 to 31.12.2020.
2. The petitioner in the instant case stood retired under the respondents on the post of Headmaster, Middle School w.e.f. 30.11.2020. As long as the petitioner was in service, there was no demand or any recovery proceeding either initiated or pending against the petitioner. The petitioner stood retired and abruptly much after the retirement the impugned order of recovery dated 23.02.2021 was passed ordering for recovery of aforesaid amount.
3. Learned counsel appearing for the petitioner submits that the present writ petition is one which stands squarely covered by the judgment of Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334 and

hence the impugned action of recovery is per se illegal and bad and the same should be quashed.

4. Supporting the order of recovery, the State counsel however submits that it is only after retirement of the petitioner while his pension papers were finalized that it detected certain excess payment received by the petitioner during the period between November, 2002 till December, 2020 and immediately thereafter the order dated 23.02.2021 was passed. According to the State counsel, at the time of retirement the employee has given an undertaking permitting recoveries to be made in case of erroneous payment being made. Therefore, the impugned order of recovery does not warrant interference.
5. Having heard the contentions put forth on either side and on perusal of records, some of the admitted factual position from the submissions made by the parties and from the pleadings is that the petitioner was working under the respondents as a Headmaster, Middle School. He stood retired from service w.e.f. 30.11.2020. The impugned order first time has been issued subsequent to his retirement. The amount of recovery is Rs.2,92,906/-. The reason for recovery being made is alleged excess payment made since November, 2002 till his retirement. Admittedly, first alleged erroneous payment was made almost 20 years back i.e. in November, 2002. It is also not a case of the respondents, as would be evident from the impugned order, that the said excess payment was received by the petitioner on account of any mis-representation or fraud played by the petitioner.
6. At this juncture, it would be relevant to take note of decision of the Supreme Court in case of Rafiq Masih (Supra) wherein in paragraph 18 the Supreme Court has laid down certain situations under which the recovery becomes impermissible under the law. The said judgment still

holds the field. For ready reference para 18 of the said judgment is being reproduced hereinunder:

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (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. A plain perusal of the aforementioned situations of the Supreme Court would clearly reveal that the case of the petitioner also falls within those situations enumerated therein. The petitioner is a retired employee. The order of recovery was issued subsequent to his retirement. The alleged excess payment was made two decades back. There is no misrepresentation or fraud alleged against the petitioner. Thus, the case of the petitioner is squarely covered by the said judgment.

8. Under the circumstances, the impugned order of recovery dated 23.02.2021 (Annexure P/3) would not be sustainable and the same

deserves to be and is accordingly set aside/quashed with consequence to follow.

9. Since the impugned order has been quashed by this court, any retiral dues payable to the petitioner and which has been hold only on account of recovery notice, the same shall be immediately processed and settled preferably within a period of 60 days from the date of receipt of copy of this order.
10. The writ petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge

inder