

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2901 of 2021

Dhwaja Ram Patel S/o Late Shri Devnath Patel Aged About 63 Years
Retired Upper Division Teacher, R/o Village Kanchanpur, Post Baramkela,
Block Baramkela, District Raigarh Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, Naya Mantralaya, Atal Nagar, Nawa Raipur Chhattisgarh
2. Director Public Instructions Government Of Chhattisgarh Indrawati Bhawan, Atal Nagar Nawa Raipur Chhattisgarh
3. Joint Director Treasury Accounts And Pension, Bilaspur Division Bilaspur Chhattisgarh
4. District Education Officer Raigarh District Raigarh Chhattisgarh
5. Block Education Officer Block Baramkela, District Raigarh Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Dhani Ram Patel, Advocate.
For State	:	Mr. Rahul Jha, GA

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/06/2021

1. Aggrieved by the respondents in passing the impugned order Annexure P-3 dated 23.11.2020, the present writ petition has been filed. Vide the impugned order the respondents have initiated recovery proceedings against the petitioner for an amount of Rs. 19,576/-.
2. The facts of the case in brief is that the petitioner working under the respondents on the post of Upper Division Teacher stood retired w.e.f. 30.04.2020. Subsequent to the retirement, the respondents have vide Annexure P-3 dated 23.11.2020 issued an order of recovery to the tune of Rs. 19,576/-. The said recovery is said to be on account of an alleged excess payment made during the period 01.01.2006 to 11.10.2010.

3. Contention of the petitioner is that on account of said recovery proceedings, the full pensionary benefit payable to the petitioner has not been finalized till now and only the provisional pension is being paid. Contention of the petitioner is that there is no misrepresentation or fraud played by the petitioner in the course of obtaining the alleged excess payment. It is also the contention of the petitioner that alleged excess payment in fact has been paid on account of fault at the hands of the respondents, for which the petitioner cannot be penalized after so long a period.
4. Counsel for the petitioner relied upon 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*** in support of his contentions.
5. State counsel on the other hand opposing the petition, submits that it is a case where in the course of settlement of his retiral dues it was detected that there was certain erroneous fixation of pay given to the petitioner which was detected and accordingly the recovery proceedings have been initiated. According to the State counsel the petitioner like all other employees on retirement he has furnished an undertaking permitting the respondent State to recover any excess payment from the dues payable to the petitioner. Thus, the impugned order does not warrant any interference.
6. Having heard the contentions put forth on either side and on perusal of records, the admitted facts as it stands is that the petitioner retired under the respondents on the post of Upper Division Teacher on 30.04.2020. The impugned order of recovery was one which was issued much after the retirement. The alleged excess payment paid to the petitioner was of a

period about 10-15 years prior to the petitioner having retired. During this period, while the petitioner was in service for 10-15 years the respondents never pointed out of any excess payment nor tried to recover the alleged excess payment. Admittedly the petitioner retired from Class-III post.

7. Given the said admitted position, it would be relevant at this juncture to refer to paragraph 18 of the judgment of the Supreme Court in the case of **Rafiq Masih (Supra)**, wherein Hon'ble Supreme Court has in very categorical terms given certain situations under which the recovery is held to be impermissible under law. For ready reference paragraph 18 of the aforementioned judgment is being 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. Perusal of the records would show that the case of the petitioner needs all the requirement, all the situations as given in the judgment of the Hon'ble Supreme Court in the case of Rafiq Masih (Supra).
9. For the aforesaid reasons, the impugned order of recovery is unsustainable, deserves to be and is accordingly set aside/quashed. Respondents are directed to settle the retiral dues payable to the petitioner at the earliest without insisting for the recovery of an amount of Rs.19,576/- demanded as per Annexure P-3 dated 23.11.2020. The retiral

dues including the pensionary benefits payable to the petitioner be settled at the earliest preferably within a period of 90 days from the date of receipt of copy of this order.

10. With the aforesaid observations, the writ petition stands disposed of.

**Sd/-
(P. Sam Koshy)
Judge**

Rohit