

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 3971 of 2021

1. Tapeswar Ram S/o Tilakram Aged About 63 Years Retd. Headmaster, R/o Dangbuda (Majhapara) , Post Jamkani, Tahsil Mainpat, District Surguja Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary, Department of Education, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh.
2. District Education Officer Surguja , District Surguja Chhattisgarh.
3. Block Education Officer Mainpat, District Surguja Chhattisgarh.
4. Joint Director Treasury, Account And Pension, Ambikapur, District Surguja Chhattisgarh.

---Respondents

For Petitioner	:	Shri Harish Khuntiya, Advocate.
For State	:	Ms. Abhyunnati Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02.08.2021

1. Challenge in the present writ petition is to the impugned order dated 22.06.2021. By the said impugned order, the respondents have initiated a recovery proceedings against the petitioner for an amount of Rs.185129/- from the retiral dues payable to the petitioner. The alleged order of recovery is in respect of certain alleged excess payment made to the petitioner on account of erroneous fixation paid during the period from 12.05.1999 to 30.06.2020.
2. The petitioner in the instant case has retired from the post of Headmaster, Middle School w.e.f. 30.06.2020. Though the petitioner has retired from service w.e.f. 30.06.2020, the respondents now after a period of about one year have issued an order of recovery for an amount of Rs.185129/- from the retiral dues payable to the petitioner.
3. The undisputed factual matrix from the pleadings as is evident is that the petitioner was working on Class-III post at the time of his retirement. The

petitioner stood retired on 30.06.2020 and the alleged excess payment has been made by virtue to erroneous fixation granted for the first time on 12.05.1999 i.e. about 21 years earlier. The other undisputed facts is that the petitioner has not been blamed for having received the alleged excess payment on account of any act on his part for getting the same. It appears that the alleged excess payment, if any, has been paid on account of some error on the part of the respondents and the entire amount has been recovered from the retiral dues payable to the petitioner.

4. According to the petitioner, the case of the petitioner falls within the ambit of situations revealed in the judgment of Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334, wherein such recoveries have been held to be impermissible under the law.
5. The State counsel on the other hand submits that upon the petitioner retiring from service on 30.06.2020 in the course of settlement of dues it was detected that the petitioner has been given wrong fixation of pay from 12.05.1999 onwards and this excess payment comes to Rs.185129/- which now while settling the retiral dues has been adjusted by the authorities. According to the State counsel, since the petitioner has received something which he is not legally entitled for, the respondents are entitled for recovering the excess amount so paid from the dues payable to the petitioner.
6. Given the facts and circumstances of the case, it would be relevant at this juncture to take note of the judgment of the Supreme Court in case of Rafiq Masih (Supra) wherein in paragraph 18 the Supreme Court has clearly held certain situations under which it has been specifically held that recoveries would become impermissible. For ready reference the operative part of the said judgment is reproduced herein under:

“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 aforesaid judgment of the Supreme Court if we consider the factual matrix of the present case, it would reveal that most of the situations envisaged in the said judgment which makes recovery impermissible is also available in the case of the petitioner in hand. The petitioner indisputably was employed as Class-III at the time of his retirement. He retired about one year before the order of recovery was passed. The alleged excess payment was made about 21 years before the date of retirement of the petitioner. The petitioner is not at fault for the alleged receipt of excess payment.

8. Given the aforesaid facts and circumstances of the case, the impugned order to that extent is not sustainable, and the same deserves to be and is hereby set aside/quashed. The respondents are directed to immediately within an outer limit of 90 days refund the entire amount recovered or adjusted from his retiral dues i.e. an amount of Rs.185129/- as per Annexure P/1 dated 22.06.2021.
9. The writ petition accordingly stands allowed and disposed of in terms of the observations made in the preceding paragraphs.

Sd/-
(P. Sam Koshy)
Judge

inder