

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5138 of 2021**

Chandrashekhar Prasad Porte S/o Hiralal Aged About 62 Years Rt. H. M.
(Middle School) R/o Dabra Post Dabra Block Balrampur District Balrampur-
Ramanujganj Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Health And Medical, Mahanadi Bhawan, Mantralaya New Raipur, District Raipur Chhattisgarh.
2. Divisional Joint Director Treasury And Pension Sarguja Division Sarguja Chhattisgarh.
3. Block Education Officer Balrampur District Balrampur District Balrampur Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Mr. Kunal Das, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy
Order on Board

23/09/2021

1. Aggrieved by the order Annexure P/1 dated 19.03.2020 the present writ petition has been filed.
2. Vide the impugned order the respondents have recovered an amount of Rs.1,25,054/- from the retiral dues payable to the petitioner. The entire amount stands recovered from the gratuity amount. The said recovery has been made on the ground of some alleged excess

payment made to the petitioner on account of wrong fixation of pay that occurred while the petitioner was in service.

3. It is a case where the petitioner stood retired from service on the post of Headmaster, Middle School w.e.f. 31.07.2019. Post retirement when the retiral dues were being settled for the first time the impugned order Annexure P/1 was passed and straight away the recovery was made from the retiral dues being paid to the petitioner and an amount of Rs.1,25,054/- was recovered from the gratuity amount paid to the petitioner.
4. The counsel for the petitioner submits that except for issuance of Annexure P/1, there has been no show cause notice and there has been no other order passed by the respondents, either giving an opportunity of hearing to the petitioner or showing the period during which the alleged excess payment was made, so that the petitioner could have ascertained the facts. He further submits that since the impugned order is one, which has been issued much after the retirement of the petitioner, the recovery as such becomes impermissible under law and the impugned action on the part of the respondents therefore deserves to be interfered with. The writ petition therefore be allowed and the respondents be directed to refund the alleged excess payment recovered from the petitioner.
5. 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.

6. 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."

7. If we consider the situations, which the Hon'ble Supreme Court has held 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. The order of recovery stands quashed. The respondents are directed to ensure that the entire retiral dues payable to the petitioner is paid at the earliest within a period of 90 days from the date of receipt of the copy of this order.

9. It is made clear that the impugned order has been quashed only so far as the recovery part is concerned. Any rectification part, the State would be at liberty to carry out the rectification on due verification of entitlement of the petitioner.
10. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge