NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5606 of 2021

- Baldau Prasad Sao S/o Dewan Sao Aged About 63 Years Retired Lecturer, R/o Village Sonsari Post Nariyara District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, School Education Department New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. District Education Officer Janjgir District Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
3. Office Of The Accountant General Zero Point Vidhansabha Road Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
4. Joint Director Treasury Pension And Account, Bilaspur District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Sushil Sahu, Advocate
For State/Respondent Nos.1,2& 4	:	Shri Neeraj Pradhan, PL
For Respondent No.3	:	Shri Ashwani Shukla, Advocate

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J
Order On Board

21.10.2021

1. Challenge in this petition is to the order of recovery of Rs.72,800/- which was sought for and out of it, the Petitioner has deposited a sum of Rs.72,599/- on 28.12.2020. It is not in dispute that the petitioner retired after rendering the services as Lecturer at Government Higher Secondary School, Sonsari, District Janjgir Champa on 30.09.2020. It is contended that the petitioner was served with a notice after the retirement. Further to settle the pension of the petitioner, for the first time after two months i.e. on 26.12.2020, the recovery notice was served vide Annexure P-2. The petitioner contends that the said recovery was made by way of an arm twisting method as after retirement if the amount would not have paid, the further pensionary benefit would not have been given. Consequently, the petitioner was forced to make payment of the said amount and out of it, he paid

Rs.72,599/- so that the pensionary benefit survives. It is contended that after the deposit was made, the action of the State respondents is under challenge as illegal and arbitrary. Learned counsel for the petitioner would submit that the ratio laid down in case of ***State of Punjab & Others Vs. Rafiq Masih (White Washer) & Others*** reported in ***2015 (4) SCC 334***, clearly postulates the recovery of amount after retirement would be barred. It is contended that the petitioner held the post of Lecturer at Govt. Higher Secondary School, a Class II post, therefore, as per the law laid down, the recovery from the petitioner cannot be made.

2. Learned State counsel would submit that the recovery is on the background of the excess payment made as and when the salary was revised. The reference was made to the undertaking given by the petitioner and would submit that the undertaking takes within its sweep entirety the excess payment made, if any. Consequently, as per the law laid down in case of ***High Court of Punjab & Haryana and Others v. Jagdev Singh*** reported in ***AIR 2016 SC 3523***, the undertaking having been given, the State is within its right to recover. Reliance is also placed in case of ***State of Chhattisgarh & Others v. Pramila Mandavi*** decided on *02.12.2019 in W.A. No.376 of 2019* and would submit that the ratio laid down in such case would also be applicable as the undertaking saves the conduct of the State.

3. Perused the documents. It is not in dispute that the petitioner belongs to Class-II cadre as he was a Lecturer in the Higher Secondary School. It is also not in dispute that after the petitioner retired, the recovery notice was served on him on the ground that excess payment was made. In case of ***Rafiq Masih*** (supra), the Supreme Court at para 18 has laid down the following guideline, which under those conditions makes the recovery impermissible. For the sake of relevance, para 18 is reproduced hereunder :

> “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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.

4. The reliance placed by the State in case of ***High Court of Punjab & Haryana v. Jagdev Singh*** (supra) would show that in such case the Supreme Court permitted the recovery to be made on the basis of undertaking given earlier. In the said case, the respondent was appointed as Civil Judge and Rules governing the service were namely Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001. Under those Rules, each of the officers were required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise. Therefore, there was a mandatory requirement under the Rules itself. The Supreme Court while

deciding the said case emphatically referred to the service rules and held that undertaking given in such circumstance would be executable and observed it that the ratio of ***State of Punjab & Ors. v. Rafiq Masih*** (supra) cannot be applied uniformly. It was held in case of ***High Court of Punjab & Haryana v. Jagdev Singh*** (supra) that the officer to whom the payment was made in the "first instance" was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. Consequently, the officer furnished an undertaking while opting for revised pay-scale.

5. The Supreme Court in case of ***Ashok Kumar v. Ved Prakash & Others*** reported in ***(2010) 2 SCC 264***, at para 22 & 23 held as under :

> "22. Before parting with this Judgment, a short submission of the learned counsel for the appellant needs to be dealt with. According to the learned counsel for the appellant, the case of *Harbilas [(1996) 1 SCC 1]* and *Rakesh Vij [(2005) 8 SCC 504]* were rendered on the amendments made to East Punjab Rent Act, whereas the case of *Mohinder Prasad Jain [(2006) 2 SCC 724]* and the issue before us concerned removing a classification which existed from the inception of the legislation. Therefore, according to the learned counsel for the appellant, a decision and reasoning concerning the East Punjab Rent Act cannot apply to a question with respect to the present Act because both the legislations are products of different legislatures and the rationale behind one cannot be compared at par with that of the other.
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> 23. The learned counsel for the appellant, in support of this contention, relied on a decision of this Court in the case of *State of Madhya Pradesh v. G.C.Mandawar [AIR 1954 SC 493]* and strong reliance on para 9 of this decision was pressed by the learned counsel for the appellant, which may be quoted :-
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>> "9. It is conceivable that when the same Legislature enacts two different laws but in substance they form

> one legislation, it might be open to the Court to disregard the form and treat them as one law and strike it down, if in their conjunction they result in discrimination. But such a course is not open where, as here, the two laws sought to be read in conjunction are by different Governments and by different legislatures."

6. The facts further would show that the petitioner was required to deposit an amount of Rs.72,800/- after his retirement. The petitioner was superannuated on 30.09.2020 and as per the averments, the said deposit was required to be made on 28.12.2020 in the Treasury, which was done by the petitioner under protest. The petitioner contended that he was told that if he does not deposit the amount, his retiral dues and pension papers would not be prepared. Consequently, the deposit was made under compulsion and under protest. The facts when are examined in the twilight zone of legality, it shows that after the retirement a sword was kept dangling over the head of the petitioner as a threat that if deposits are not made, as required, the pensionary benefit would not be released. Reality therefore was far from rosy-hued narrative. The narrative of the incident suggests when the petitioner was called upon to deposit, the petitioner was not equal in bargaining power. The inequality in bargaining power is the result of disparity, as certainly the petitioner was weaker party in the position to avail the pensionary benefit, which was the means of his livelihood upon terms imposed upon by the stronger party i.e. the State. The petitioner therefore did not have a meaningful choice but to give his assent to deposit the amount; might be it is unfair, unreasonable and unconscionable, therefore, following the principles of the Supreme Court in ***Central Inland Water Transport Corporation Ltd. & Another v. Brojo Nath Ganguly & Another*** reported in ***AIR 1986 SC 1571***, the actions can be said to be there has been a gross equality of bargaining power between

the State and the petitioner as non-payment of the amount would create a sense of insecurity in the mind of the petitioner. The Supreme Court as has been held that in the likewise situation, deciding any case which may not be covered by authority but before the Court the beacon light of Preamble to the Constitution would be available and the Court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in the Constitution. Therefore, the deposit under such duress by the petitioner lies on dark side of both illegality and humanitarian principles. Consequently, it would be against the public policy and contrary to the fundamental rights and the directive principles enshrined in the Constitution. Accordingly, it cannot be legalized or insulated.

7. In a result, it is directed that the amount of Rs.72,599/- so deposited by the petitioner shall be returned to him by the State within a period of 60 days with interest of 6% per annum from the date of its deposit till the date of actual payment.

8. In view of the above, the petition is allowed to the above extent.

Sd/-

(Sanjay S. Agrawal)
JUDGE

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