

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 412 of 2021**

S K Jangde S/o Late Moolchand Jangde Aged About 63 Years R/o
Village - Batouli, Police Station And Tahsil - Batouli, District - Surguja,
Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through - Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar Naya Raipur, District Raipur Chhattisgarh
2. The District Education Officer Surguja, District Surguja Chhattisgarh
3. Blok Education Officer Batauli Police Station - Batauli, Janpad Panchayat - Batauli District - Surguja Chhattisgarh
4. The Divisional Joint Director Treasury, Account And Pension Department Surguja Division Ambikapur, District - Surguja Chhattisgarh
5. The Accounted General Chhattisgarh, Zero Point Vidhansabh Raipur, District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. A. K. Yadav, Advocate
For State	:	Mr. Vikas Shrivastava, PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****09/02/2021**

1. The challenge in the present writ petition is to the impugned order of recovery dated 31.10.2019 whereby the respondents have issued a notice of recovery of an amount of Rs. 3,07,928/-. The said recovery is in respect of certain excess payment made to the petitioner while in service.

2. The facts relevant for disposal of the present writ petition is that the petitioner was initially appointed under respondents as Circle Organizer in the year 1999 and in due course of time got promotion to the post of Block Education Officer on 29.08.2013. The petitioner on working on the said post got retired from service on attaining the age of superannuation w.e.f. 30.06.2019. Subsequent to four months after the date of retirement the respondents have issued an order of recovery dated 31.10.2019 whereby the respondents have ordered for recovery of an amount of Rs. 3,07,928/- from the dues payable to the petitioner and respondents have cleared retiral dues payable to the petitioner only after adjusting the aforesaid amount of 3,07,928/-.
3. Counsel for the petitioner submits that it is a case where an excess payment has been made long before the petitioner has retired in the year 2006 on account of certain erroneous fixation of pay given to the petitioner. According to the petitioner the respondents if at all find any erroneous fixation of pay they could have only carried out rectification part without making any recovery and impugned order therefore is bad in law. Further contention of the petitioner is that there was no misrepresentation or fraud played by the petitioner for obtaining the same and excess payment if at all received by the petitioner is on account of fault on the part of the respondents and petitioner having bonafidely consumed the same, recovery proceedings should not had been initiated by the respondents.
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** while challenging the impugned order.

5. State counsel on the other hand opposing the petition submits that it is a case where the alleged excess payment has been detected in course of settlement of his retiral dues and that is when the order of recovery has been passed. According to the State at the time of retirement of the petitioner is given an undertaking of recovering any excess payment made in the process of settlement of his retiral dues and thus the impugned order does not warrant any interference.
6. Having heard the contentions put forth on either side and on perusal of records, it is relevant to take note of the fact that petitioner was working on the post of Block Education Officer stood retired w.e.f. 30.06.2019, till the date of retirement there has been no detection on the part of the respondents so far as any illegal or excess payment made to the petitioner. It is four months after retirement that notice of recovery has been issued. The notice of recovery shows that excess payment is said to have been arisen on account of wrong fixation given to the petitioner about 13 years prior to his date of retirement i.e. from 01.01.2006 onwards. It is also not a case of the respondents that the said excess payment has been received by the petitioner on account of any misrepresentation or fraud played by him but was on account of the error on the part of the officials under the respondents.
7. 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.”

8. 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).

9. The impugned order of recovery thus on the face of it is not sustainable and same deserves to be and is accordingly set aside/quashed. Respondents are directed to ensure that an

amount of Rs. 3,07,928 is refunded back to the petitioner at the earliest within a period of 90 days.

10. It is made clear that interference is only to the extent of recovery part, the Government would be at liberty to carry out rectification to the fixation part without making any recovery.
11. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit