

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 7555 of 2019

1. Pyarelal Patel S/o Late Tulshi Prasad Patel Aged About 62 Years Retired Accountant From The Office Of Block Education Officer, Baramkela, District- Raigarh, Chhattisgarh. **---- Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Dept. Of School Education, Mantralya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District- Raipur, Chhattisgarh.
2. Joint Director Treasury, Account And Pension, Bilaspur, District- Bilaspur, Chhattisgarh.
3. District Education Officer Raigarh, District- Raigarh, Chhattisgarh.
4. Block Education Officer Baramkela, District- Raigarh, Chhattisgarh., **---Respondents**

For Petitioner	:	Shri Pawan Shrivastava, Advocate.
For State	:	Shri Sudeep Verma, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18.03.2021

1. The challenge in the present writ petition is to the action on the part of the respondents in ordering the petitioner for depositing an amount of Rs. 3,19,000/- towards excess payment that the petitioner has received while in service.
2. Facts of the case in brief is that the petitioner herein was working on the post of Accountant under the respondents. The petitioner was initially appointed in the year 1974 and continued to work under the respondents till 31.08.2019 i.e. the date on which he has superannuated on attaining the age of retirement. On the date i.e. 31.08.2019, the respondents issued an order asking the petitioner to deposit an amount of Rs. 3,19,000/- by way of a challan in respect of

certain excess payment that the petitioner has received while in service.

3. It is said that while the petitioner was discharging his duties, there was a wrong fixation of pay made in-respect-of the salary payable to the petitioner in the year 01.04.1997 and it continued uptill the year 2018 and it is this order of wrong fixation of payment and the consequential excess money received by the petitioner which has led to the Department intention to recover on his retirement.
4. The contention of the petitioner is that the action on the part of the respondents is totally impermissible under law in the light of the judgment of the Hon'ble Supreme Court in the case of "State of Punjab and Ors. etc. v. Rafiq Masih (White Washer) etc. [2015 AIR SCW 501]" wherein there are various situations mentioned by the Supreme Court wherein the recovery under the said situations has been held to be impermissible.
5. According to the counsel for the petitioner, the facts of the present case covers almost all the situations so mentioned by the Hon'ble Supreme Court in the aforesaid judgment and therefore action of recovery is impermissible and liable to be quashed by this Court.
6. Counsel for the State on the other hand opposing the petition referring to Annexure R/2 which was a declaration given by the petitioner at the time of his retirement submitted that since there is undertaken given by the petitioner himself permitting the

respondents to recover any excess payment received by him recoverable from his pension. The action on the part of the respondents asking the petitioner to deposit the excess amount received by him thus can not be said to be bad-in-law or arbitrary.

7. According to the State Counsel, since the petitioner has received the benefits of erroneous fixation right uptill 2018, it also can not be said that the action on the part of the respondents is one which has been initiated at a belated stage, thus, prayed for rejection of the writ petition.
8. Having heard the contention put forth on either side and on perusal of records, it would be relevant at this juncture to take note of the judgment of the Hon'ble Supreme Court in the case of "Rafiq Masih" (supra) wherein Hon'ble Supreme Court has laid down the situations under which the recoveries have been held to be impermissible. 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.”

9. In the light of the aforesaid authoritative decision of the Hon'ble Supreme Court if we look into the facts of the present case it clearly reflects that the action of the respondents in initiating recovery has been subsequent to retirement, it is also a case where the alleged excess payment for the first time was made as early as on 01.04.1997 i.e. almost about 22 years before retirement, In addition, the petitioner has also retired from service while working as a class-III employee under the respondents. In addition to all this, from the pleadings available on record, there also does not seem to be any misrepresentation or fraud committed by the petitioner in-order to get erroneous fixation of pay whatever has been received by the petitioner has been erroneously given to him on account of an error on the part of the employees of the Officers under respondents for which the petitioner cannot be held responsible.
10. Given the said facts and circumstances of the case, the case of the petitioner stands squarely covered by the judgment of the Hon'ble Supreme Court in the case of Rafiq Masih (Supra) and the impugned action on the part of the respondents initiated recovery proceedings against petitioner deserves to be and is accordingly quashed. If the amount has till date not been released to the petitioner, the respondents are directed to ensure that the entire amount shall be released/refunded back to the petitioner forth with within a period of 60 days from the date of receipt of copy of this order, failing which the entire amount shall carry interest @ 10 % per annum from the date of retirement till the date of actual payment.

11.Allowing the writ petition is only to the extent of restricting the respondents from initiating recovery proceedings, however so far as rectification of erroneous fixation is concerned, the Authority would have the power to carry out the rectification.

The writ petition accordingly stands allowed and disposed of.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha