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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6766 of 2024**

Yogeshwar Singh Kshatriya S/o Late Shri Phool Chand Kshatriya Aged About 62 Years R/o Ward No. 02, Kailash Nagar, Takhatpur, Distt - Bilaspur Chhattisgarh

... Petitioner(s)**versus**

1 - State Of Chhattisgarh Through The Secretary, School Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, Distt - Raipur Chhattisgarh

2 - Deputy Director Directorate, School Education Department, Indrawati Bhawan, Nava Raipur, Distt - Raipur Chhattisgarh

3 - Joint Director Department Of Treasury Accounts And Pension, Bilaspur Division, Distt - Bilaspur Chhattisgarh

4 - District Education Officer Bilaspur, Distt - Bilaspur Chhattisgarh

5 - Block Education Officer Takhatpur, Distt - Bilaspur Chhattisgarh

... Respondent(s)

For Petitioner	: Mr. Govind Dewangan, Advocate
For State	: Ms. Poorva Tiwari, Panel Lawyer

**S.B.: Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****01/04/2026**

1. With the consent of learned counsel appearing for the parties, this case is heard finally.
2. Petitioner has filed this writ petition seeking following reliefs:-

“ i. This Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of the petitioner.

ii. This Hon'ble Court may kindly be pleased to quash/set aside the impugned recovery order dated 08.07.2024 (Annexure P/1)

iii. This Hon'ble Court may kindly be pleased to direct the respondent authorities to not recover any amount from retiral dues of the petitioner.

iv. Any other relief/reliefs, which this Hon'ble Court may think fit and proper in the facts and circumstances of the case, with cost of the petition, may also please be granted to the petitioner.”

3. Learned counsel for petitioner submits that the petitioner while working on the post of Head Master, Middle School, stood retired from service after attaining age of superannuation on 30.06.2024. After retirement of petitioner, impugned order of recovery dated 08.07.2024 was issued against the petitioner for recovering an amount of Rs.82,260/- on the ground that petitioner has been paid excess amount. Recovery is sought after retirement and therefore recovery of excess amount from petitioner is not permissible in view of decision of Hon'ble Supreme Court in case of **State of Punjab &**



ors vs. Rafiq Masih (White Washer) & ors, reported in (2015) 4

SCC 334.

4. On the other hand, learned counsel for the State oppose submission of learned counsel for the petitioner and would submit that recovery is to be made pursuant to undertaking given by petitioner to the department in this regard. Recovery is against excess payment made to petitioner. There is no arbitrariness on the part of respondent in deducting the amount which is paid in excess to petitioner.

5. I have heard learned counsel for the parties and also perused the documents annexed along with writ petition.

6. Recovery which is made from petitioner is in respect of excess payment made. It is not the case of respondent that excess payment is made to petitioner due to misrepresentation or suppression of fact or any fraud played by petitioner with respondent.

7. In case of **Rafiq Masih (supra)**, Hon'ble Supreme Court considering the issue of recovery of amount paid in excess has summarized the situations where in certain cases, even recovery from the employee by the employer would not be permissible in law.

In Para-18 it was observed thus:-

“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.”

8. In case of **High Court of Punjab and Haryana and others vs. Jagdev Singh, reported in (2016) 14 SCC 267**, Hon'ble Supreme Court though had considered the issue with regard to the undertaking, however, Para-10 (i) of the decision in case of Rafiq Masih (supra) has not been overruled or interfered. This aspect is also considered by the Division Bench of this Court in **WA No.264/2020 (State of CG vs Labha Ram Dhruv)** wherein it was observed thus:



“9. In the case at hand, the Revision of Pay Rules, 2009 and 2017 do not make any enabling provision reserving option for the employer to seek refund of the amount paid in excess, by making the employee to furnish an undertaking. Even if we conclude, for the sake of arguments, that even in the absence of enabling provision under the Rules, undertaking given by the employee would operate, the fact remains that against the classes of employees against whom recovery would be impermissible in law, as held by the Hon’ble Supreme Court in the matter of Rafiq Masih (Supra), recovery from the employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) would still be impermissible in law. Meaning thereby that even when undertaking is submitted by the employee, but he otherwise belongs to Class-III and Class-IV service, and the amount has been paid more than 5 years back, the law declared by the Hon’ble Supreme Court in the matter of Rafiq Masih (Supra) would still hold the field in favour of such employees, because the judgment in the matter of Rafiq Masih (Supra) has not been overruled, but only clarified, by the Hon’ble Supreme Court in its later judgment in the matter of Jagdev Singh, Supra”

9. In the case at hand, it is not the case of respondents that petitioner had received excess payment by practicing fraud or by making misrepresentation. Thus, petitioner cannot be compelled to return the amount which has been paid by the respondents on their own without any misrepresentation or fraud on the part of petitioner.

10. In light of above decisions and in the given facts and circumstances of the case, in the considered opinion of this Court, the



respondents cannot be permitted to effect recovery from the petitioner of the amount paid in excess and being so, recovery against petitioner is not sustainable.

11. Consequently, writ petition is allowed. Order Annexure P-1 dated 08.07.2024 so far it relates to recovery to be made from petitioner of Rs.82,260/- is hereby quashed. Amount so recovered be returned to petitioner within a period of four months from the date of receipt of copy of order, failing which recovered amount shall carry interest @ 8% per annum from the date of order till its realization.

Sd/-
(Parth Prateem Sahu)
Judge