

(2018) 05 RAJ CK 0090

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2339 of 2017

Lakha Ram Bishnoi @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 07-05-2018

Acts Referred:

Citation : (2018) 05 RAJ CK 0090

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Himanshu Shrimali, Harish Jangid, Dinesh Ojha, P.R. Singh

Final Decision : Allowed

Judgement

At the request of learned counsel for the parties, the matter has been finally heard though no reply to the writ petition has been filed by the respondents as the issue involved is legal only.

This writ petition has been filed by the petitioner challenging the order dated 17.02.2017 (Annex.-5) passed by the respondents ordering for recovery of a sum of Rs.1,08,391/- from the petitioner.

It is, inter alia, submitted by learned counsel for the petitioner that the petitioner was serving on the post of Teacher Grade-II and came to retire on

30.06.2016. However, the petitioner's papers for payment of retiral benefits were not processed; whereafter, the order dated 17.02.2017 (Annex.-

5) has been issued, seeking to recover a sum of Rs.1,08,391/- on account of excess payment due to wrong fixation for the period 01.01.1982 to

31.08.1986 and from 10.01.2002 to 30.06.2016.

Learned counsel for the petitioner submits that the action of the respondents in seeking to recover the said amount vide Annex.-5 from the petitioner is

ex-facie contrary to the law laid down by Hon'ble Supreme Court in the case of State of Punjab and Ors. v. Rafiq Masih (White Washer) : 2015

(2) WLC (SC) Civil 388, wherein Honâ??ble Supreme Court clearly laid down that the amount cannot be recovered after retirement and/or in excess

of five years, on both the counts, the action of the respondents is bad.

Learned counsel for the respondents supported the order impugned. It was submitted that once the fixation made is

incorrect, the respondents are well within their right to recover the amount from the petitionerâ??s retiral benefits and, therefore, the writ petition

deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

Honâ??ble Supreme Court in the case of Rafiq Masih (surpa) after considering the entire law on the subject, laid down as under:-

â??12. 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 ClassIII and Class-IV service (or Group 'C' and Group 'D' service).

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

(iii) Recovery from employees, when the excesspayment 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 haswrongfully 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 atthe 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.â??

The facts in the present case are not in dispute, wherein after retirement of the petitioner, the amount is sought to be recovered from his retiral

benefits and, the dispute pertains to the fixation made in the year 1982 and 2002. The fact that the recovery thereafter goes on for the period till 2016

is of no consequence as the same is the result of the mistake committed in the year 2002 and, therefore, on account of the said aspect, the recovery

would be hit by the principles laid down in the case of Rafiq Masih (supra), wherein Honâ??ble Supreme Court has laid down that recovery from the

retired employees cannot be made and that after five years, the excess payment also cannot be recovered.

In view of the above fact situation and law laid down by Honâ??ble Supreme Court, the action of the respondents in recovering the amount vide

Annex.-5 dated 17.02.2017, cannot be sustained.

Consequently, the writ petition filed by the petitioner is allowed. The order dated 17.02.2017 (Annex.-5) is quashed and set aside. The respondents are

directed to pay all the retiral benefits to the petitioner in accordance with law.

The needful be done by the respondents within a period of four weeks from the date a certified copy of this order is placed before the respondents.