AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(S) No. 9716 of 2019

Shankar Narayan Chakrawarty, S/o. Late A.K. Chakarwarty, Aged About 62 Years, Retd. Headmaster, Govt. Primary School, Tilaknagar, Bilha, District Bilaspur Chhattisgarh. R/o. Tarbahar Railway Fatak, Bilaspur, District Bilaspur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
2. Accountant General Raipur, District : Raipur, Chhattisgarh
3. Joint Director, Treasury, Account And Pension, Bilaspur, District Bilaspur Chhattisgarh.
4. District Education Officer Bilaspur, District Bilaspur, Chhattisgarh.
5. Block Education Officer Bilha, District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioners	:	Mr. H.B.Agrawal, Senior Advocate with Mr. K.S.Pawar & Mr. S.K.Kushawaha, Advocates
For State/Respondents No.1 & 3 to 4	:	Ms. Akanksha Jain, Dy. Govt. Advocate
For Respondent No.2	:	Mr. Ashwani Shukla, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

30.01.2020

1. Challenge in this petition is to the order of recovery of Rs.1,50,113/- which was sought for and was recovered after the petitioner retired on 01.06.2019. It is not in dispute that the petitioner retired after rendering the services as Headmaster, Government Primary School on 01.06.2019. 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 on 16.08.2019, the recovery notice was served by 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 Rs.1,50,113/- 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 Headmaster, Govt. Primary School, a Class-III 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-III cadre as he was Headmaster in the Primary 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 while the pay fixation was made uptill 2013. 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 :
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> (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
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> (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
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> (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.
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> (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.
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> (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. In the instant case, as per Annexure P-2, the recovery has been sought to be made for the period of revised pay scale from 1986 till 01.07.1913. The undertaking on which the State placed reliance is of 01.07.2017 i.e. much after the amount of revised pay-scale was calculated and paid. Reading of undertaking further would show that the petitioner was put to notice that the excess payment made after 1st January, 2016 i.e. one other revised pay scale and thereby consented and undertook to make the payment, if it has been made excess. The undertaking was specially for the specific period starting from 01.01.2016; consequently, it cannot take into sweep the past payment made from 1986 till 2013. The law laid down by the Supreme Court in ***High Court of Punjab & Haryana v. Jagdev Singh*** (supra) also clearly marks a distinction as in that case, the officer in the "first instance" was placed on notice that in case excess amount is paid then it would be recovered on account of revised pay

scale paid. In the instant case, for the payment made from 1986 to 2013, no such undertaking exists which postulates that petitioner was put on guard and was noticed that excess payment made would be recoverable. Therefore, it cannot be stated that the revised pay scale when was given in 2017, it would include the past pay scale which was paid uptill 2013 as it cannot be applied retrospectively.

6. Therefore, the ratio of judgment of ***High Court of Punjab & Haryana v. Jagdev Singh*** (supra) will not be applicable to the case of the petitioner as also the ratio laid down by the Hon'ble Division Bench of this Court in W.A. No.376 of 2019 cannot be applied universally to the facts of case of the petitioner. The ratio decidendi when applied, it would show that the principles laid down in case of ***State of Punjab & Ors. v. Rafiq Masih*** (supra) would be applicable to the facts of this case instead the case of ***High Court of Punjab & Haryana v. Jagdev Singh*** (supra), which is particularly with a special service rule and the execution of the undertaking which was in its inception would not be applicable. As per the ratio of laid down in case of ***Sudesh Kumar v. State of Uttarakhand*** reported in ***(2008) 3 SCC 111***, the Court would not construe a section of a statute with reference to that of another statute unless the latter is in pari materia with the former. Therefore, a decision made on a provision of a different statute will be of no relevance unless underlying objects of the two statutes are in pari materia. The decision interpreting various provisions of one statute will not have the binding force while interpreting the provisions of another statute.

7. 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.

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 :-

> “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."

8. Therefore, the ratio of judgment rendered in case of ***State of Punjab & Ors. v. Rafiq Masih*** (supra) would be applicable. To conclude, it is observed that the undertaking given by an employee cannot be used uniformly when the recovery of dues is done after his retirement or otherwise there cannot be a straight jacket formula for such recovery. Rather the execution of undertaking, the time when it was executed would be relevant factor to evaluate whether the State can be allowed to act upon on such undertaking. In the facts of this case, the undertaking given by the petitioner in the year 2017 cannot be allowed to stand to recover the dues for the payment made from 1986 to 2013.

9. The facts further would show that the petitioner was required to deposit an amount of Rs.1,50,113/- after his retirement. The petitioner was superannuated on 01.06.2019 and as per the averments, the said deposit was required to be made on 16.01.2019 in the Treasury, which was done by the petitioner under protest. The petitioner contended that he was told that if he do 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.

10. In a result, it is directed that the amount of Rs.1,50,113/- 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.

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

Sd/-
(Goutam Bhaduri)
Judge

Ashok