

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5820 of 2010**

Moher Sai, aged about 55 years, S/o Late Devsharan, Peon, Block Education Office, Pratappur (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary Education Department, DKS Bhawan, Mantralaya, Raipur (CG)
2. Joint Director, Treasury Accounts & Pension, Bilaspur Division, Bilaspur (CG)
3. Deputy Accounts Officer, Wadrafnagar, District Sarguja (CG)
4. Block Education Officer Pratappur, District Sarguja (CG)

---- Respondents

For Petitioner	:	Shri D. N. Prajapati, Advocate
For State	:	Ms. Sunita jain, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****13.08.2018**

The challenge in the present writ petition is to the notice dated 09.09.2010 which is said to be an order of recovery of excess amount paid to the petitioner to the tune of Rs.70,382/-. The said excess amount was in respect of certain erroneous pay scale which was given to the petitioner from 01.10.1990 onwards.

2. The petitioner in the present writ petition has obtained an order on 27.01.2011 whereby it was ordered that no further coercive steps would be

taken so far as the recovery is concerned.

3. At this juncture, all that is required to be ascertained is whether the said recovery order issued against the petitioner was justified or not.

4. Admittedly, from reading of Annexure P-1 shows that the excess amount was because of wrong fixation of pay given to the petitioner 20 years back from the date of issuance of the impugned order. Further what also cannot be lost sight is the fact that the petitioner is not responsible for the alleged excess payment that he has received. There was no misrepresentation or fraud played by the petitioner for obtaining the excess amount allegedly given to the petitioner. Whatever excess amount has been paid is purely on the inadvertence or clerical mistake on the part of the officers of the respondents. The petitioner was working as a peon/waterman i.e. low paid Class-IV employee. All these are situations wherein 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** has categorically held to be impermissible under law. This Court has no hesitation in holding the impugned order in the light of the judgment of the Supreme Court in the case of Rafiq Masih (supra) being unsustainable and the same deserves to be and is accordingly set aside/quashed.

5. At this juncture, counsel for the petitioner submits that the respondents have collected the entire amount of excess payment from the petitioner whereas the State counsel submits that the amount has subsequently been refunded back to the petitioner vide Annexure P-2 dated 04.08.2010.

6. Be that as it may, since this Court has already held the impugned order of recovery to be bad in law and set aside the same, the authority

concerned would verify the aspect as to whether the amount stands recovered or not. If it stands recovered, the same should be refunded back with interest @ 6% from the date of recovery and if it has not been recovered, no further recovery would be permissible.

7. The writ petition accordingly stands allowed.

**Sd/-
P. Sam Koshy
Judge**