

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 5842 of 2017**

Hari Shankar Verma S/o Late Shri F. P. Verma, aged about 62 years,  
retired Principal, District Institute of Education and Training, D. I. E. T. ,  
Khairagarh, District Rajnandgaon, Chhattisgarh

**---- Petitioner****Versus**

1. State of Chhattisgarh through Secretary, Department of School  
Education Mantralaya, Mahanadi Bhawan, New Raipur, Chhattisgarh
2. Joint Director, Treasury, Account and Pension Raipur, Division Raipur,  
District Raipur, Chhattisgarh
3. Principal, Government Education College, Shankar Nagar, Raipur,  
District Raipur, Chhattisgarh

**---- Respondents**


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| For Petitioner       | : | Shri Ajay Shrivastava, Advocate      |
| For Respondent/State | : | Shri Shashank Thakur, Govt. Advocate |

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**Hon'ble Shri Justice P. Sam Koshy****Order On Board****26/03/2018**

Present writ petition has been preferred assailing the order dated 11.10.2017 Annexure P-1 whereby the respondents have issued an order of recovery to the tune of Rs.3,09,734/- against the petitioner on account of certain wrong fixation being provided to the petitioner while he was in service.

2. The case of the petitioner, in brief, is that he retired from service on the post of Principal, School Education Department w.e.f. 28.02.2017. After retirement, when the retiral dues were being computed, the respondents issued Annexure P-1 which is under challenge in the present writ petition.

3. According to the respondents, Annexure P-1 has been issued on account of certain erroneous fixation of pay being provided to the petitioner

which otherwise he was not entitled for and which could be detected only while his pension papers were being prepared.

4. Contention of the counsel for the petitioner is that the said order of the respondents is totally illegal, bad in law and is not sustainable for the reason that firstly it is in violation of the principles of natural justice as the opportunity of hearing was not granted. Moreover, the impugned order has been passed much subsequent to the petitioner having retired on 28.02.2017. He submits that the alleged erroneous fixation of pay was first granted to the petitioner in the year 1997 i.e. about 20 years prior to the date of retirement. He submits that the order of recovery has been issued based upon a circular of the year 2011 which otherwise would not be applicable to the petitioner who had already received the benefit in 1997 itself and therefore, the circular of 2011 cannot be relied upon by the respondents for carrying out any rectification in fixation of pay of the petitioner. Counsel for the petitioner submits that the present writ petition stands squarely covered by the decision of the Supreme Court in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) and Others.** reported in **(2015) 4 SCC 334.**

5. State counsel, however, opposing the petition submits that it was only after retirement of the petitioner when the pension papers were being prepared, it was detected that the petitioner was granted the advantage of two advance increments on account undertaking B.Ed course at his own expenses which otherwise the petitioner was not entitled for since he was discharging the duty of a principal and the said benefit was payable only to a teacher or a lecturer. Since the petitioner was not entitled for the said benefit, the excess payment has been detected and the order of recovery has been passed.

6. Having heard the contentions put forth on either side and on perusal of the record what reflects is that admittedly Annexure P-1 has been passed without giving an opportunity of hearing to the petitioner. The other striking

feature is that the error, for the first time, crept in the year 1997 and the order of recovery has been issued about 20 years thereafter. Another admitted fact is that the order of recovery has been issued on 11.10.2017 whereas the petitioner stood retired on 28.02.2017.

7. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that since the excess payment, if any paid to the petitioner, was not on account of any misrepresentation or fraud played by the petitioner, the issue so far as recovery of pay is concerned stands squarely covered by the decision of the Supreme Court in the case of Rafiq Masih (supra). So far as the rectification part is concerned, since the impugned order has been passed in violation of the principles of nature justice, the said order would not be sustainable and the same is accordingly set aside. However, the liberty is left open to the respondents to pass an appropriate order regarding rectification after granting an opportunity of hearing to the petitioner. Meanwhile, the retiral dues shall be released to the petitioner forthwith without any further delay.

8. The writ petition thus stands disposed of.

**Sd/-  
(P. Sam Koshy)  
JUDGE**