

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 2215 of 2018**

Maniram Jatwar S/o Shri Ganeshram Jatwar, aged about 61 years, working as Upper Division Teacher, Govt. Middle School Katbitla, Korba, District Korba, R/o Village & Post Barpali, Block Kartala, via Bhaisma, District- Korba, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, School Education Department, Mahanadi Bhavan, Mantralaya, New Raipur, District- Raipur, Chhattisgarh.
2. District Education Officer, Korba, District- Korba, Chhattisgarh.
3. Block Education Officer, Korba, District- Korba, Chhattisgarh.
4. Joint Director, Treasury, Account and Pension, Bilaspur Division, Bilaspur, District- Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri K. S. Pawar along with Shri Sashi Kumar Kushwaha, Advocates
For Respondent/State	:	Shri Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****12/03/2018**

The challenge in the present writ petition is to the order of recovery passed by the respondents to the tune of Rs.1,03,785/-.

2. The petitioner, in the instant case, was working as an upper division teacher in Government Middle School, Katbitla, Block Korba, District Korba till 31.01.2018. The order of recovery seems to be by virtue of some erroneous fixation of pay given to the petitioner. The erroneous fixation of pay was done as early as in September, 2006 and the recovery order has now been issued

after more than 11 years from the date the first error was crept in. The error admittedly was not on account of any misrepresentation or malafides on the part of the petitioner but was purely on account of clerical error on the part of the officials of the respondents.

3. At this juncture, it is relevant to refer to the judgment of the Hon'ble 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 where in last paragraph, the Hon'ble Supreme Court has given certain parameters under which the recovery, by the employer, would be impermissible. First category is in the event of the employee belonging to Class III and Class IV service (or Group C and Group D service). Second category is recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery. Third category is 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.

4. These three clauses in addition to the other observations made by the Supreme Court in the aforesaid case would squarely fit in the facts of the present case. Admittedly, the present petitioner stood retired from service w.e.f. 31.01.2018. The error in fixation of pay first crept in September, 2006 i.e. almost 12 years ago. During the said period, the respondents had never issued any notice nor detected the error. The petitioner is not in any manner responsible for the wrong fixation of pay provided to him.

5. Under the circumstances, this court is of the opinion that no fruitful purpose would be served in keeping the petition pending as the same is squarely covered by the decision of the Supreme Court in the case of Rafiq Masih (supra). Accordingly the petition stands allowed. However, it is made clear that the respondents shall have the liberty to rectify the error crept in fixation of pay and shall carry out the rectification without initiating any recovery proceeding in respect of any excess payment made to the petitioner.

6. With the aforesaid observation, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola