

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5005 of 2018**

Kewal Ram S/o Late Korwa Ram, Aged About 63 Years, R/o Village Paiga, Tahsil Mainpat, Police Station Kamleshwarpur, District Surguja, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through, The Secretary, Department Of Education Mahanadi Bhavan Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. District Education Officer, Surguja District Surguja, Chhattisgarh
3. Block Education Officer, Mainpat, District Surguja, Chhattisgarh
4. Joint Director, Treasury, Account And Pension, Ambikapur District Surguja, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Harish Khuntiya, Advocate
For State	:	Shri Majid Ali, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****07.08.2018**

With the consent of the parties, the writ petition is finally disposed of.

2. Challenge in the present writ petition is to Annexure P-1 dated 17.05.2018 whereby the office of respondent no.4 has detected an excess payment paid to the petitioner to the tune of Rs.2,64,896/- and asked the petitioner for depositing the same or else the amount would be recovered from the retiral dues payable to him.

3. At the outset counsel for the petitioner submits that the impugned order is not sustainable for the simple reason that it has been passed firstly

without giving an opportunity of hearing to the petitioner, secondly the same has been passed much after the petitioner retired from service and thirdly the respondents have not been able to show as to under what count the excess amount has been made. Lastly it was also contended by the petitioner that even otherwise such recoveries have been held to be impermissible under the law by 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**.

4. Perusal of the record would show that the petitioner was working as an Assistant Teacher which is a Class-III post and retired from service on 31.03.2017. That it is after more than one year, the impugned order now has been passed on 17.05.2018. The impugned order only reflects an amount of Rs.2,64,896/- which is said to be an excess payment made to the petitioner but the nature of excess payment or the details of excess payment and the period during which the excess payment was made is not reflected from the said impugned order. The admitted fact from the record shows that before issuance of the impugned order, no opportunity of hearing was given to the petitioner. Under the circumstances, this Court is of the opinion that the aforesaid impugned order is not sustainable in the light of the landmark decision of the Supreme Court in the case of Rafiq Masih (supra). The impugned order therefore deserves to be and is accordingly set aside/quashed and the appeal stands allowed.

5. The allowing of the present writ petition would not preclude the respondent State to verify whether the excess payment has been made to the petitioner while releasing of the retiral dues or whether it was paid long before by virtue of some erroneous fixation of pay. In the event the excess

payment had been made at the time of releasing of retiral dues then after giving opportunity of hearing to the petitioner, the respondents can initiate fresh recovery proceedings. However, if the excess payment was made long ago, in the light of the judgment of the Rafiq Masih (supra) the same cannot be recovered.

6. As a consequence of the present writ petition stands allowed. The amount which has already been deducted by the respondents shall be refunded forthwith to the petitioner with the aforesaid liberty.

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