

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6678 of 2018**

Brijlal Yadav S/o Shri Jhaduram Yadav, Aged About 59 Years,
Working As Lecturer At Govt. Girls Higher Secondary School Gurur,
Block Gurur, District Balod, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya New Raipur, District Raipur Chhattisgarh
2. Director, Directorate Chhattisgarh Public Instruction Raipur, District Raipur, Chhattisgarh
3. Joint Director, Treasury And Pension, Durg Division Durg, District Durg, Chhattisgarh
4. Principal At Govt. Girls Higher Secondary School Gurur, Block Gurur, District Balod Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ajay Shrivastava, Advocate
For State	:	Shri Chandresh Shrivastava, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****08.10.2018**

With the consent of the parties the matter was finally heard at motion stage.

2. Challenge in the present writ petition is to the order Annexure P-1 dated 01.05.2018 Whereby the respondents have issued an order of

recovery against the petitioner for an amount of Rs. 29,723/-. The order of recovery is pursuant to an alleged excess amount of payment made to the petitioner during the period 01.02.2011 to 31.12.2015.

3. Counsel for the petitioner submits that the said order of recovery is apparently bad in law and impermissible in the light of the judgment of 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**. He submits that the petitioner is working as a Lecturer under the respondents and that the petitioner has been allegedly granted some wrong fixation w.e.f. 01.02.2011 up till 31.12.2015. According to the petitioner, it is now after more than 5 years from the date of the first error that had been crept, the respondents have initiated the recovery proceedings. He submits that the situation which has come under the judgment of the Supreme Court in the case of Rafiq Masih (supra) holding recovery to be impermissible includes the situation where the recovery has been ordered to be made for an excess payment made more than 5 years prior to the date of recovery. It is further contended by the petitioner that in any case it is not the case of the respondents that the petitioner has been paid the excess amount on account of any misrepresentation or fraud by the petitioner.

4. This factual position which has been stated by the petitioner is not disputed by the State counsel. However, he submits that since the petitioner is not a retired employee, the recovery order would be permissible as it is not a case where the recovery has been initiated after retirement. He further submits that the last excess payment that was paid to the petitioner was on December, 2015 it is well within the 5 years period so as to attract the judgment of the Supreme Court in the case of Rafiq

Masih (supra).

5. Having considered the contentions put forth on either side and on perusal of the record admittedly the petitioner has been paid some excess amount from 01.02.2011 to 31.12.2015. It is also not in dispute that the said excess payment was made on account of some error on the part of the respondents. From 2011 till the date of recovery it would reveal that the excess payment was first made to the petitioner much before 5 years of time from the date of the order of recovery. Undisputedly, before issuance of the impugned order no opportunity of hearing was also granted to the petitioner.

6. Given the said facts, this Court is of the opinion that applying the judgment of the Supreme Court in the case of Rafiq Masih (supra), the impugned order of recovery is bad in law and the same deserves to be and is accordingly set aside.

7. The writ petition accordingly stands allowed.

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