

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 284 of 2019**

Smt. Vibha Solanki W/o Shri Rajendra Singh Solanki, Aged About 54 Years, Working As Principal And Posted At Govt. Higher Secondary School Rengakathera, Block And District Rajnandgaon, Chhattisgarh.

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

1. State Of Chhattisgarh, Through Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
  2. Director, Public Instruction, Raipur, District Raipur, Chhattisgarh.
  3. Divisional Joint Director, Treasury And Pension Durg, Division Durg, District Durg, Chhattisgarh.
- District Education Officer, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

**----Respondents**

|                |   |                                |
|----------------|---|--------------------------------|
| For Petitioner | : | Mr. Ajay Shrivastava, Advocate |
| For State      | : | Ms. Astha Shukla, Panel Lawyer |

**Hon'ble Shri Justice P. Sam Koshy****Order on Board****16/01/2019**

1. With the consent of the parties, the matter has been heard and dispose of finally.
2. The challenge in the instant Writ Petition is to the order Annexure-P/1 dated 05/10/2018. Vide the impugned order, recovery to the tune of Rs. 80,205/- has been ordered to be recovered from the salary payable to the petitioner.
3. The facts of the case in brief is that, the petitioner is presently working as the Principle of the Higher Secondary School, Rajnandgaon. The impugned order has been passed on 05/10/2018 showing that the petitioner by virtue of wrong fixation of pay, made for the first time on 01/07/2013 and which was paid to the petitioner up-till 31/08/2018 has been paid an excess amount of Rs. 80,205/-. It is this order which is under challenge in the instant Writ Petition.

4. The contention of the counsel for the petitioner is that, the impugned order of recovery is bad in law and is also liable to be set-aside in the light of the judgment passed by the Hon'ble 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 further submits that, the excess payment has been paid to the petitioner not because of a false representation on part of the petitioner, but because of the fault on part of the officers of the respondents. He submits that, the said erroneous fixation for the first time was paid for a period more than 5 years earlier to the order of recovery. He further contended that, in the light of the judgment of the Supreme Court in the case of Rafiq Masih (Supra), the recovery as such is impermissible under law and thus prayed for setting-aside of the same.
5. The State counsel on the contrary opposing the petition submits that, it is a case where the recovery has been ordered to be made while the petitioner is still in service. She further submits that, the excess payment was last made to the petitioner on 31/08/2018 and as such it cannot be said to be an old excess payment which is being ordered to be recovered. She further submits that, as and when the respondents came to know of the erroneous fixation and the excess payment made, they immediately took steps for recovery of the same and thus prayed for rejection of the Writ Petition.
6. Having heard the contentions put forth on either side and on perusal of record, what apparently is not in dispute is the fact that, the petitioner is not responsible for the alleged excess payment that he has received. It is also not in dispute that the excess payment for the

first time was made on 01/07/2013 i.e. more than 5 years earlier to the order of recovery.

7. Given the aforesaid factual situations if we look into the situation which have been given in the judgment of the Supreme Court in the case of Rafiq Masih (Supra), the aforesaid two situations are also one under which the recovery has been ordered to be impermissible under law.
8. At this juncture it would be 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) etc."*** reported in **2015 AIR SCW 501**. The Hon'ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery is totally impermissible under law. The situations as envisaged in the said judgment are as under :

***"(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).***

***(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.***

***(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.***

***(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.***

***(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."***

9. In the light of the aforesaid factual matrix of the case and also taking

note of the order of the Supreme Court in the case of Rafiq Masih (Supra), the impugned order therefore being impermissible under law is not sustainable and the same deserve to be and is accordingly set-aside/quashed with consequences to follow.

10. The Writ Petition accordingly stands allowed and disposed off.

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

Sumit