

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1445 of 2019**

Gopi Lal Verma S/o Late Shri Babu Lal Verma Aged About 65 Years
Retired Head Master, Govt. Primary School, Narraguda, Block Dondi,
District- Balod, Chhattisgarh.,

---- Petitioner

Versus

1. State Govt. Of C.G. Through The Secretary, School Education Department, Ministry, Mahanadi Bhawan, P.S. Rakhi, Atal Nagar, New Raipur, Chhattisgarh.
2. Divisional Joint Director (Treasury, Accounts And Pension), Durg Division, Durg, Chhattisgarh.
3. Block Education Officer Dondi District- Balod, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Mr. Anshuman Shrivastava, PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****08/03/2019**

1. The challenge in the present writ petition is to the order Annexure P-1 dated 09.03.2018 whereby the petitioner has been inflicted with an order of recovery to the tune of Rs. 1,21,136. The said amount of recovery is towards excess payment made to the petitioner on account of some wrong fixation of pay during the period from 01.07.2008 to 30.06.2017.
2. According to the petitioner, he has retired from service on the post of Head Master of primary school on 30.06.2017. Subsequently, the

respondent have issued the impugned order showing erroneous excess payment that was made to the petitioner. That on the pretext of withholding of the pension and the retiral dues the petitioner was compelled to deposit the entire amount of alleged excess payment.

3. According to the petitioner, the said action of recovery is otherwise impermissible under law for the reason that the petitioner is a retired employee firstly. The Secondly, he, on the date of retirement also was a low paid class III employee. Thirdly, that the petitioner was not in any manner responsible for the alleged wrong payment that has been paid to him and that the wrong fixation has been made on account of error on the part of the officer of the respondent establishment. According to the petitioner, the recovery thus is bad in law in view of the judgment of the Supreme Court in the Case ***“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”*** reported in ***2015 AIR SCW 501***.
4. State Counsel, however, trying to justify the action of the State Government on the ground that the petitioner seems to have been paid something which he otherwise was not legally entitled for and when the respondents detected the excess payment made to the petitioner they have ordered for recovering the excess payment and for rectification of the error which thereafter cannot be held to be bad in law and thus prayed for the dismissal of the writ petition.

5. Having heard the contentions put forth on either side and on perusal of record particularly taking note of the admitted factual matrix of the case that the petitioner retired as a class three employee, he stood retired on 30.06.2017, the order of recovery has been passed much after his retirement. The petitioner has not made any misrepresentation or have not played fraud for getting the erroneous excess payment.
6. Given the aforesaid factual matrix of the case it would be relevant at this juncture refer to the judgement of the Supreme Court in case of **Rafiq Masih(Supra)** wherein the Supreme Court had laid down certain situation under which it has been held that the recovery would be impermissible in the law. The situations envisaged in the said judgment are reproduced hereinunder:-

“(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."

7. Perusal of the aforementioned situations, it would reveal that the case of the petitioner squarely falls within these situations as envisaged in the said judgement of **Rafiq Masih(Supra)**. This Court therefore has no hesitation in reaching to the conclusion that the order of recovery dated 09.03.2018 Annexure P-1 is unsustainable and rather impermissible under law. The impugned order accordingly set aside/quashed. It is ordered that amount deposited by the petitioner be refunded back to the petitioner forth with without any further delay preferably within a period of 90 days from today.
8. Accordingly, the writ petition stands disposed off.

Sd/-

**(P. Sam Koshy)
Judge**