

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1584 of 2021**

1. Derharam Sahu S/o Shri Nohar Lal Sahu Aged About 56 Years
Lecturer Govt. High School Karrejhar Gurur, District Balod
Chhattisgarh
--- Petitioner

Versus

1. State Govt. Of Chhattisgarh Through The Secretary, Department Of
School Education, Mantralaya, Mahanadi Bhawan, Atal Nagar P. S.
Rakhi, New Raipur District Raipur Chhattisgarh
2. Joint Director Kosh, Lekha, Pension, Durg Chhattisgarh
3. Block Education Officer Gurur District Balod Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ajay Shrivastava, Advocate.
For State	:	Shri Rahul Jha, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****22/03/2021**

1. The grievance of the petitioner in the present writ petition is to the
action of recovery initiated by the respondents to the tune of Rs.
3,87,037/- from the petitioner.
2. According to the counsel for the petitioner, the said action of
recovery initiated by the respondents is in clear violation to the
principle of natural justice in as much as the impugned action of
recovery is without affording any opportunity of hearing to the
petitioner to explain whether the benefit that the petitioner has
received is in accordance with law or not. According to the counsel
for the petitioner, the allegation of the petitioner having got a wrong
fixation also is erroneous as whatever he has received is in
accordance with the service condition governing the field and there

is no illegality as such which requires the respondents to initiate recovery proceedings. According to the petitioner at least a show-cause notice could have been issued by the respondents before taking a decision of recovery against the petitioner.

3. Further contention of the petitioner is that even otherwise, the action of recovery is impermissible in-terms-of the judgment of the Hon'ble Supreme Court in the case of "***State of Punjab and Ors. etc. v. Rafiq Masih (White Washer) etc.*** [2015 AIR SCW 501]" wherein the Hon'ble Supreme Court has held that it is impermissible, in case, if the employee is a class-III low paid employee and that the alleged excess payment having been made more than five years prior to the order of recovery.
4. The State Counsel on the other hand submits that since the petitioner is still in service, the Department on verifying the service records found that he has been erroneously granted a particular pay-scale which he was otherwise not entitled for by virtue of which the petitioner has received an excess payment of Rs. 3,87,037/- and the authorities have therefore passed an order to recover the said amount from the petitioner, it cannot be held to be in any manner bad-in-law or erroneous.
5. Having heard the contention put forth on either side and on perusal of records, admittedly the petitioner has not been issued with a show-cause notice before the action of recovery has been initiated by the respondents. The petitioner never got an opportunity to defend the action of the pay-scale that he has received or explain

on the alleged action of excess payment that the petitioner has received on account of wrong fixation of pay.

6. Without expressing any opinion on the other grounds that the petitioner has raised, this Court is of the opinion that the impugned action on the part of the respondents initiating recovery proceedings is in-violation to the principle of nature justice, particularly, when the petitioner is in service of the respondents and there is quite a lot of service left for the respondents to have recovered the excess payment later on after grant of an opportunity of hearing.
7. Given the said facts, the impugned action of recovery by the respondents is therefore held to be bad-in-law and the authorities are thereby ordered not to initiate any recovery proceedings against the petitioner by virtue of Annexure P/2.
8. However, the respondents/State would be at liberty to issue a show-cause notice to the petitioner calling upon his explanation in-respect-of the alleged excess payment that is said to have been paid to him. After receiving the explanation, the respondents would be at liberty to take an appropriate decision in accordance with the rules and regulation governing the field. While deciding the same, the authorities would also be at liberty to take into consideration the judgment of the Hon'ble Supreme Court in the case of Rafiq Masih (Supra), also the subsequent judgments passed by the Supreme Court in this regard.

Sd/-

(P. Sam Koshy)
Judge