

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3493 of 2021

Loku Ram Sahu S/o Hazari Ram Sahu Aged About 57 Years Working As
Head Master, Govt. Middle School Narbada, District- Balod, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of School Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh
2. Principal Secretary Department Of Finance, Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh
3. District Education Officer District- Balod, Chhattisgarh
4. Block Education Officer Gurur, District- Balod, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Naveen Nirala, Advocate
For State	:	Ms. Abhyunnati Singh, PL

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/07/2021

1. Aggrieved of the order dated 14.06.2021, the present writ petition has been filed. Vide the impugned order, respondents have called upon the petitioner to deposit the amount of Rs. 48,096 or give consent for deduction of the said amount from the salary payable to the petitioner. The alleged recovery of Rs. 48096/- was on account of excess payment made allegedly for the period between February, 2007 to December, 2015.
2. According to the petitioner he has been working on the post of Head Master, Middle School which is a Class-III post and alleged excess payment being made more than 13-14 years back and respondents could

have initiated recovery against the petitioner. It is also the contention of the petitioner that before issuance of the impugned order the petitioner also was not granted opportunity of hearing by which he could have defended the payment that he has received.

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. February, 2007 up till December, 2015. According to the petitioner, it is now after more than 6 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 6 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 6 years period

so as to attract the judgment of the Supreme Court in the case of RafiqMasih (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 February, 2007 to December, 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 2007 till the date of recovery it would reveal that the excess payment was first made to the petitioner much before 6 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

Rohit