CGHC010260542026 2026:CGHC:42970

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5364 of 2026

AMARDEEP CHOUBEY
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Date: 2026.10.07 10:35:42 +0530

1 - Bharat Lal Sahu S/o Sanwat Ram Sahu Aged About 62 Years R/o- 2/c, Road 15, Sector 7, Hscl, Bhilai, Civic Centre Bhilai, District- Durg, Chhattisgarh

... Petitioner

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nava Raipur, District Raipur, Chhattisgarh

2 - Divisional Joint Director Education Division- Durg, Office Of The Joint Director (Education), Durg, District Durg, Chhattisgarh

3 - Divisional Joint Director Treasury, Accounts And Pensions, Durg Division, District Durg, Chhattisgarh

4 - District Education Officer (Deo), Durg Office Of The District Education Officer, District Durg, Chhattisgarh

5 - Block Education Officer (Beo), Durg Office Of The Block Education Officer, District Durg, Chhattisgarh

... Respondents

(Cause title taken from CIS)

For Petitioner	**:** Mr. Ishan Verma, Advocate
For Respondent/State	**:** Mr. Aditya Tiwari, Panel Lawyer.

Hon'ble Shri Justice Bibhu Datta Guru

Order On Board

05.10.2026

1. By the present writ petition, the petitioner has prayed for following reliefs:-

> *“10.1 That the Hon'ble Court may kindly be pleased to call the records pertaining to the case of the petitioner;*
>
> *10.2 That the Hon'ble Court may kindly be pleased to issue an appropriate writ, order, or direction, quashing and setting aside the impugned order/notice dated 09/06/2026 (ANNEXURE P/1) issued by Respondent No. 5 (Block Education Officer, Durg), whereby a recovery of ₹10,93,456 has been ordered against the Petitioner.*
>
> *10.3 That the Hon'ble Court may kindly be to issue a writ in the nature of Mandamus or any other appropriate writ, order, or direction, restraining the Respondent authorities from making any recovery, deduction, or administrative adjustment of Rs.10,93,456 (or any other amount) from the Petitioner's regular pension, gratuity, leave encashment, or any other retiral and superannuation benefits.;*
>
> *10.4 That this Hon'ble Court may kindly be pleased to pass such other order(s) or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”*

2. Learned counsel for the petitioner submits that, vide order dated 12.02.2026, the petitioner was promoted to the post of Headmaster (Class-II post) from the post of Upper Division Teacher (Class-III post) and thereafter retired from service on 31.05.2026 on attaining the age of superannuation. Learned

counsel submits that, after the retirement of the petitioner, the impugned order dated 09.06.2026 has been issued by the Block Education Officer, directing recovery of a sum of Rs. 10,93,456/- from the petitioner on account of alleged excess payment made to him during the period from 2016 to 2026. Learned counsel, by referring to Annexures P-4 dated 06.01.2025 and P-5 dated 21.03.2025, submits that the Block Education Officer (B.E.O.) as well as the Joint Director, Education Division, have respectively confirmed the fixation of the First Time Pay Scale granted to the petitioner. Hence, there is no illegality or the decision by which the benefit of time pay scale was given to the petitioner. It is contention of the learned counsel for the petitioner that in view of the decision of the Supreme Court in the case of **State of Punjab & ors vs. Rafiq Masih (White Washer) & ors, reported in (2015) 4 SCC 334,** recovery of excess payment from the petitioner, in the facts of the case, is not permissible. He also contended that from the face of the order it is apparent that excess payment is not made to petitioner because of his misrepresentation or any fraud played by petitioner to the respondent-department. Recovery of amount if paid in excess cannot be made from him. He also placed reliance upon the decision of the Supreme Court in the matter of **Jogeshwar Sahoo & Ors Vs. The District Judge, Cuttack & Ors** published in 2025 INSC [**SLP (C) No(s).5918/2024**].

3. Learned counsel for the State submits that though the State

authorities have confirmed the grant of time pay scale to the petitioner, but after retirement, when an audit objection was raised by the Department of Audit, the recovery order has been issued to the petitioner. There is no arbitrariness on the part of respondent in deducting the amount which is paid in excess to petitioner.

4. I have heard learned counsel for the parties and also perused the documents annexed along with writ petition.

5. In the case of **Jogeshwar** (supra), the Supreme Court held as under:-

> "11. In the case at hand, the appellants were working on the post of Stenographers when the subject illegal payment was made to them. It is not reflected in the record that such payment was made to the appellants on account of any fraud or misrepresentation by them. It seems, when the financial benefit was extended to the appellants by the District Judge, Cuttack, the same was subsequently not approved by the High Court which resulted in the subsequent order of recovery. It is also not in dispute that the payment was made in the year 2017 whereas the recovery was directed in the year 2023. However, in the meanwhile, the appellants have retired in the year 2020. It is also an admitted position that the appellants were not afforded any opportunity of hearing before issuing the order of

recovery. The appellants having superannuated on a ministerial post of Stenographer were admittedly not holding any gazetted post as such applying the principle enunciated by this Court in the above quoted judgment, the recovery is found unsustainable."

6. In the case of **Rafiq Masih** (supra), the Supreme Court considering the issue of recovery of amount paid in excess has summarized the situations where in certain cases, even recovery from the employee by the employer would not be permissible in law. In Para-18 it was observed thus:-

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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. Recovery which is made from petitioner is towards excess payment made to him due to wrong fixation of pay. It is not the case of respondent that excess payment is made to petitioner due to misrepresentation or suppression of fact or any fraud played by petitioner with respondent.

8. This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if such excess payment was made by the employer by applying a wrong principle for

calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, such excess payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered.

9. At the same time, this Court is not inclined to examine the correctness or otherwise of the pay fixation granted to the petitioner on merits. Merely because recovery of the alleged excess payment is impermissible in view of the law laid down in **Rafiq Masih** (supra), it would not preclude the respondents from examining the issue of pay fixation in accordance with law. However, any such exercise can be undertaken only after affording due opportunity of hearing to the petitioner and passing a reasoned order.

10. Accordingly, the present writ petition is **allowed**. The impugned recovery order dated 09/06/2026 (Annexure P/1) and the consequential recovery of amount Rs.10,93,456/- are hereby set aside. Liberty is reserved to the respondents to undertake a fresh exercise with regard to pay fixation of the petitioner in accordance with law, after affording him an adequate opportunity of hearing. It is, however, made clear that any recovery of the alleged excess payment already made to the petitioner shall be governed by the law laid down by the Supreme Court in **Rafiq Masih** (supra).

11. Consequently, the respondents are directed to release and refund to the petitioner the amount, if any, recovered or withheld pursuant to the impugned recovery order. The respondents shall further ensure release of all remaining admissible retiral dues, if any, payable to the petitioner. The aforesaid exercise shall be completed within a period of 50 days from the date of receipt of a certified copy of this order.

SD/-
(Bibhu Datta Guru)
Judge

Amardeep