

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 182 of 2015**

1. Satrugan Lal Sinha, S/o Late Munnalal Sinha Aged About 41 years
Occupation-Service, Posted as Asst. Revenue Inspector (Moharier) in
Municipal Council, Bhilai-Charoda, District - Durg (Chhattisgarh)
2. Sitaram Chandrakar, S/o Late B.L. Chandrakar, Aged About 59 Years
Occupation-Service, Posted as Asst. Revenue Inspector (Moharier), in
Municipal Council, Bhilai-Charoda, District - Durg (Chhattisgarh)
3. Ravindra Nath Boes, S/o Late D.N. Boes, Aged About 54 Years,
Occupation-Service, Posted as Cashier (Rokpal), in Municipal Council,
Bhilai-Charoda, District-Durg (Chhattisgarh)

---- Petitioners**Versus**

1. Municipal Council, Bhilai - Charoda, Through: Chief Municipal
Officer, Bhilai-Charoda, District-Durg (C.G.)
2. State Of Chhattisgarh, Through: The Secretary, Urban Administration
and Development Department, Mahanadi Bhawan, Mantralaya, Naya
Raipur (Chhattisgarh)
3. President-In-Council, Through: its President, Municipal Council,
Bhilai-Charoda, District Durg (C.G.)
4. Municipal Corporation, Bhilai-Charoda, through Commissioner (CG)

---- Respondents**And****WPS No. 6 Of 2015**

- Dilip Kumar Verma, S/o Late Radheshyam Verma, Aged About 48
years, Occupation-Service, Posted as Driver in Municipal Council,
Bhilai-Charoda, District-Durg (Chhattisgarh)

---- Petitioner**Vs**

1. Municipal Council, Bhilai-Charoda Through: Chief Municipal Officer,

Bhilai-Charoda, District Durg (C.G.)

2. State Of Chhattisgarh, Department of Urban Administration, Through the Secretary, Urban Administration and Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur (Chhattisgarh)
3. President-in-Council, Through: its President, Municipal Council, Bhilai-Charoda, District Durg (C.G.)
4. Municipal Corporation Bhilai-Charoda, through : Commissioner (CG)

---- Respondents

And

WPS No. 133 Of 2015

1. Man Singh Patel, S/o Late Govind Ram Patel, Aged About 53 years, Occupation-Service, Posted as Mechanic, in Municipal Council, Bhilai - Charoda, District - Durg (Chhattisgarh)
2. Bharat Lal Sahu S/o Late Ramadin Sahu, Aged About 59 Years, Occupation-Service, Posted as Line Men, in Municipal Council, Bhilai - Charoda, District - Durg (Chhattisgarh)
3. Sattu Lal Nirmalkar, S/o Late Sadhu Ram, Aged About 55 Years Occupation-Service, Posted as Asst. Revenue Inspector (Moharier), in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
4. Rom Narayn Banchore, S/o Late Tikam Ram Bachore, Aged About 54 Years, Occupation-Service, Posted as Assit. Revenue Inspector (Moharier), in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
5. Shreeram Kurrey, S/o Late Nathu Ram Kurrey, Aged About 50 Years, Occupation-Service, Posted as Pipeline Mechanic, in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
6. Fakuram Ram Yadav, S/o Late Pancham Yadav, Aged About 55 Years, Occupation-Service, Posted as Asst. Revenue Inspector (Moharier), in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
7. Sita Ram Chouhan, S/o Late Baba Singh Chouhan, Aged About 50 Years, Occupation-Service, Posted Chowkidar, in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
8. Bodhram Sahu, S/o Late Jugutu Ram Sahu, Aged About 48 Years Occupation-Service, Posted as Asst. Pipeline Mechanic, in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)

9. Tijuram Nirmalkar S/o Late Anjori Nirmalkar, Aged About 58 Years, Occupation-Service, Posted as Head Mechanic, in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
10. Kamlesh Kumar Chandrakar, S/o Maniram Chandrakar, Aged About 48 Years, Occupation-Service, Posted as Pipe Line Mechanic, in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
11. Maniram Sahu S/o Sukhram Sahu, Aged About 48 Years, Occupation – Service, Posted as Masson, in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
12. Sant Ram Barle, S/o Manglu Ram Barle, Aged About 48 Years, Occupation-Service, Posted as Pipe Line Mechanic, in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
13. Jagdish Verma, S/o Late Narayan Prasad Verma, Aged About 56 Years Occupation-Service, Posted as Typist, in Municipal Council, Bhilai - Charoda, District - Durg (Chhattisgarh)
14. Paras Ram Tandon, S/o Late Umed Singh Tandan, Aged About 55 Years, Occupation Service Posted as Asst. Revenue Inspector (Moharier), in Municipal Council, Bhilai-Charoda, District- Durg (Chhattisgarh)
15. Smt. Radha Bai, W/o Late Omkar Madhukar, Aged About 45 Years Occupation-Service, Posted as Dack/Mail/Postal Runner, in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)

---- Petitioners

Vs

1. Municipal Council, Bhilai-Charoda Through: Chief Municipal Officer, Bhilai-Charoda, District - Durg (CG)
2. State Of Chhattisgarh Through: The Secretary, Urban Administration and Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur (Chhattisgarh)
3. President -In-Council, Through: its Presidents, Municipal Council, Bhilai-Charoda, District - Durg (CG)
4. Municipal Corporation, Bhilai-Charoda, through its Commissioner (CG)

---- Respondents

And

WPS No. 298 Of 2015

1. Ram Gopal, S/o Late Shri Ram Bagash Aged About 48 years
Occupation - Service, Posted as Sweeper, in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
2. Ramanuj Verma S/o Late K.R. Verma, Aged About 49 Years
Occupation - Service, Posted as Driver, in Municipal Council, Bhilai-Charoda, and District-Durg (Chhattisgarh)
3. Mina Ram, S/o Kejau Ram, Aged About 57 Years, Occupation-Service,
Posted as Sweeper, in Municipal Council, Bhilai-Charoda, District - Durg (Chhattisgarh)
4. Yougeshwar Rao, S/o A. Rao Aged About 50 Years, Occupation - Service, Posted as Sweeper, in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
5. Gajanand Dhewar S/o Sundar Lal Dhewar, Aged About 51 Years
Occupation - Service, Posted as Asst. Grade - II, in Municipal Council, Bhilai – Charoda, Distict-Durg (Chhattisgarh)
6. Rakhram Verma S/o Late Ganga Ram Verma Aged About 51 Years
Occupation - Service, Posted as Driver, in Municipal Council, Bhilai -Charoda, District-Durg (Chhattisgarh)
7. Sant Prasad S/o Late Bhulau Ram, Aged About 50 Years, Occupation - Service Posted as Sweeper, in Municipal Council, Bhilai-Charoda District-Durg (Chhattisgarh)
8. Joshep S/o Ishak, Aged About 50 Years, Occupation - Service, Posted as Sweeper, In Municipal Council Bhilai-Charoda, District-Durg (Chhattisgarh)
9. Lakahn Lal Nishad, S/o Late Bhagbali Nishad, Aged About 61 Years
Occupation - Service, Posted as Pump Kuli, In Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
10. Ramchandra Yadav, S/o Late Rajaram Yadav, Aged About 52 Years,
Occupation - Service, Posted as Peon Cum Chowkidar In Municipal Council, Bhilai-Charoda District-Durg (Chhattisgarh)
11. Ramswarup S/o Late G. Nath, Aged About 48 Years, Occupation - Service, Posted as Sweeper in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
12. Chowaram Chandrakar S/o K.R. Chandrakar, Aged About 58 Years,
Occupation-Service, Posted as Pump Kuli, in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)

13. Ishwar Prasad Chandrakar S/o Late Chain Singh Chandrakar, Aged About 49 Years, Occupation - Service, Posted as Pump Kuli, In Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
14. Rekham Yadav S/o F.R. Yadav, Aged About 55 Years, Occupation - Service, Posted as Pump Kuli, In Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
15. Chataniya Kumar Chandrakar S/o Magan Lal Chandrakar, Aged About 51 Years, Occupation - Service, Posted as Asst. Revenue Inspector (Muharier) in Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)
16. Keshow Lal Verma S/o D.P. Verma, Aged About 47 Years, Occupation - Service, Posted as Driver, In Municipal Council, Bhilai-Charoda, District - Durg (Chhattisgarh)
17. Smt. Tarani Verma W/o Late Ranji Lal Verma, Aged About 52 Years, Occupation - Service Posted as Asst. Grade-II, In Municipal Council, Bhilai-Charoda, District-Durg (Chhattisgarh)

---- Petitioners

Vs

1. Municipal Council, Bhilai-Charoda, Through : Chief Municipal Officer, Bhilai-Charoda, District Durg (C.G.)
2. State Of Chhattisgarh, Through : The Secretary, Urban Administration and Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur (Chhattisgarh)
3. President - In – Council, Through : its President Municipal Council, Bhilai-Charoda, District Durg C.G.
4. Municipal Corporation, Bhilai-Charoda, through Commissioner (CG)

---- Respondents

And

WPS No. 555 Of 2015

1. Vedashi S/o Nathu Aged About 58 years, Occupation-Service, Posted as Sweeper, in Municipal Council, Bhilai-Charoda, District- Durg, (Chhattisgarh)
2. Miland Deshpandey, S/o Late Shri M. Deshpandey, Aged About 56 Years Occupation- Service, Posted as Mechanic, In Municipal Council,

Bhilai-Charoda, and District-Durg, (Chhattisgarh)

3. Suresh Kumar Verma, S/o Late J.P. Verma, Aged About 56 Years
Occupation- Service, Posted as Assistant Grade II (Class III), In
Municipal Council, Bhilai-Charoda, District-Durg, (Chhattisgarh)
4. Kamal Kishore S/o Daya Das Aged About 53 Years, Occupation-
Service, Posted as Sweeper, In Municipal Council, Bhilai-Charoda,
District Durg, (Chhattisgarh)
5. Smt. Duikhiya Bai D/o Late Sundar Lal, Aged About 61 Years
Occupation- Service, Posted as Sweeper, In Municipal Council, Bhilai-
Charoda, District Durg, (Chhattisgarh)
6. Bhulau Ram S/o Late Mangal Ram Aged About 53 Years Occupation-
Service, Posted as Sweeper, In Municipal Council, Bhilai-Charoda,
District Durg, (Chhattisgarh)
7. Pukhraj Chandrakar S/o Late Magan Lal Aged About 53 Years
Occupation- Service, Posted as Linemen, In Municipal Council, Bhilai-
Charoda, District- Durg, (Chhattisgarh)
8. Krishna Ram Verma S/o A.R. Verma Aged About 51 Years
Occupation- Service, Posted as Pump Kulli, In Municipal Council,
Bhilai Charoda, District Durg, (Chhattisgarh)
9. Yad Ram Deshmukh S/o M.S. Deshmukh Aged About 60 Years
Occupation- Service, Posted as A.G. II (Class III), In Municipal
Council, Bhilai- Charoda, District- Durg, (Chhattisgarh)
10. Manohar Singh Kothari S/o A.R. Kothari, Aged About 57 Years
Occupation-Service, Posted as Asst. Teacher (Class III), In Municipal
Council, Bhilai-Charoda, District Durg, (Chhattisgarh)
11. Dhal Singh Mandariya S/o Chatur Singh Madhairiya Aged About 48
Years Occupation- Service, Posted Asstt. Teacher (Class III), Jaynata
School Run By Municipal Council, Bhilai-Charoda, District Durg,
(Chhattisgarh)
12. Himanchal Prasad Chandrakar S/o Late C.L. Chandrakar Aged About
59 Years Occupation- Service, Posted as Asst. Teacher (Class III),
Janta School, Run By Municipal Council, Bhilai- Charoda, District
Durg, (Chhattisgarh)
13. Rakesh Kumar Sahu S/o Late K.L. Sahu Aged About 47 Years
Occupation-Service, Posted as Peon In Janta School Run By Municipal
Council, Bhilai-Charoda, District Durg, (Chhattisgarh)
14. Dhal Singh Verma S/o Late P.P. Verma Aged About 54 Years

Occupation-Service, Posted as Asst. Laboratory, In Janta School Run By Municipal Council, Bhilai-Charoda, District Durg, (Chhattisgarh)

15. Ishwar Chandra Tripathi S/o Late K.L. Tripathi Aged About 55 Years
Occupation- Service, Posted As Physical Instructor/ Teacher, Janta School, Run By Municipal Council, Bhilai-Charoda, District Durg, (Chhattisgarh)

16. Khelewan Ram Sahu S/o Late Shri B.R. Sahu Aged About 56 Years
Occupation- Service, Posted As UDT (Class III), Janta School, In Municipal Council, Bhilai-Charoda, District Durg, (Chhattisgarh)

17. Pradeep Kumar Banjare S/o M.D. Banjara Aged About 55 Years
Occupation- Service, Posted As UDT, Janta School, Run By Municipal Council, Bhilai-Charoda, District Durg, (Chhattisgarh)

18. Ram Narayan Bankure S/o B.S. Bankure Aged About 61 Years
Occupation- Service, Posted As UDT, Janta School, Run By Municipal Council, Bhilai-Charoda, District Durg, (Chhattisgarh)

19. Padum Lal Yadav S/o Late V.L. Yadav Aged About 55 Years
Occupation- Service, Posted As Peon Cum Chowkidar, In Municipal Council, Bhilai-Charoda, District Durg, (Chhattisgarh)

---- Petitioners

Vs

1. Municipal Council Bhilai-Charoda, Through: Chief Municipal Officer, Bhilai-Charoda, District Durg, (C.G.)

2. State Of Chhattisgarh, Through: The Secretary, Urban Administration and Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)

3. President-In-Council, Through: Its President, Municipal Council, Bhilai-Charoda, District Durg, (C.G.)

4. Municipal Corporation, Bhilai-Charoda, through Commissioner, (CG)

---- Respondents

For Petitioners : Shri Sourabh Sharma, Advocate.

For Respondents 1 and 3 : Shri Akhilesh Kumar, Advocate.

For Respondent/State : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

06/07/2015

1. Learned counsel for the petitioners is permitted to join the Municipal Corporation, Bhilai-Charoda, as respondent in the cause title of the writ petitions during the course of the day.
2. In all the writ petitions, the petitioners are working on different Class-3 and Class-4 posts like Assistant Revenue Inspector, Driver, Cashier, Lineman, Mechanic, Watchman, Assistant Pipeline Mechanic etc. in the establishment of Municipal Council, Bhilai-Charoda, now reconstituted as Municipal Corporation, Bhilai-Charoda. They have assailed the legality and validity of the order of recovery directed to be made separately from each one of them for the reason that they have been made excess payment towards Medical Expenses and Fuel Allowances for the period from July, 2000 to July, 2008.
3. Learned counsel for the petitioners would argue that the petitioners are not holding any gazetted posts, they are lowly paid employees and they have been paid the amount towards medical and fuel expenses by the Municipal Council without there being any fraud or misrepresentation played by them. He would submit that the employees have never made any representation for payment of such allowances which has been treated to be excess payment.
4. Shri Akhilesh Kumar, learned counsel for respondents No.1 & 3 and newly added Municipal Corporation, Bhilai-Charoda, would submit that even though the petitioners have not made any misrepresentation or fraud, since they were found not entitled for the amount in question in course of audit objection, recovery is fully justified. He would place reliance on the law laid down by the Supreme Court in the matter of

Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others¹. He would draw attention of the Court to Annexure-R/1 which is a letter dated 20.4.2003 issued from the Directorate of Urban Administration and Development, Chhattisgarh to CMO, Municipal Council, Bhilai-Charoda bringing into his notice that the petitioners are not entitled to the benefits which were admissible to them as employee of SADA, Bhilai, therefore, the same should not be allowed.

5. Indisputably, the petitioners are not holding any gazetted post. They were working in different Class-3 and Class-4 posts as Assistant Revenue Inspector, Driver, Cashier, Lineman, Mechanic, Watchman, Assistant Pipeline Mechanic, etc. respectively. Return filed by the respondents do not indicate that at any point of time the petitioners have made any misrepresentation or fraud while obtaining payment towards medical and fuel expenses. It was for the Municipal Council to have stopped payment to the petitioners when Directorate of Urban Administration and Development brought the same to its notice in the year 2003 vide Annexure-R/1, despite the said communication, the Municipal Council continued to make payment to the petitioners for which they cannot be held responsible.
6. The law as to when excess payment made to an employee, over and above his legal entitlement, can be recovered from him, has been settled by the Supreme Court in **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.**² wherein, after considering all previous judgments on the issue, the Supreme Court has concluded in para-12 thus:-

12. 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

¹ (2012) 8 SCC 417

² AIR 2015 SC 696

hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

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

(iii) Recovery from the 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. In the case at hand also, the petitioners are not working in any gazetted post. Recovery sought to be made against them is towards excess payment made to them from July, 2000 to July, 2008 i.e. more than 5 years back. Thus, the case of the petitioners squarely falls within the exception of extreme hardship carved out by the Supreme Court in para-12 of **Rafiq Masih** case.

8. For the foregoing, the writ petitions are allowed and the impugned recovery is set aside.

Sd/-
Judge
(Prashant Kumar Mishra)