

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4366 of 2015**

Shivshankar Yadav S/o Kashtu Ram, Aged About 40 Years
Working As Peon, Government Higher Secondary School,
Kersai, District Jashpur, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Scheduled Caste & Schyeduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The Commisisoner, Department Of Scheduled Caste & Scheduled Tribe Development Chhattisgarh, Raipur, (Chhattisgarh)
3. The Collector, (Scheduled Tribe Welfare Branch), District Jashpur, (Chhattisgarh)
4. The Principal, Government Higher Secondary School, Kersai, District Jashpur, (Chhattisgarh)

---- Respondents

For Petitioners	:	Shri Harish Khuntiya, Advocate.
For Respondents	:	Shri Dhiraj Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****24/11/2015**

(1) Heard.

(2) Learned counsel appearing for the parties would submit that the issue raised in this petition stands concluded by the decision of this Court rendered in W.P. (S) No. 3440/2015 (Shobnath Chand Vs. State of Chhattisgarh & others) and analogous cases decided on 26.10.2015 in which this Court has held in paras 8, 9 & 10 as under:-

“8. In **Rafiq Masih's case (supra)**, Their Lordships of the Supreme Court have considered the entire issue in a great

detail and it has been held specifically that where payments have mistakenly been made by the employer, in excess of their entitlement, certain recoveries have been held to be impermissible in law. Para 18 of the report states as under:-

“18. It is not possible to postulate all situations of hardships, 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employees, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV -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.”

“9. In the above-stated judgment, Their Lordships of the Supreme Court have held that recovery from the employees belonging to Class-II and Class-IV services is impermissible in law where the payment has been made mistakenly by the employer in excess of entitlement.

10. In the present case, it is the case of the petitioners and the respondents also that payment has been made mistakenly by the State to the petitioners and excess payment has been

made on 4-10-2008 for a period in excess of five years before the order of recovery dated 16-9-2015 and as such, the order of recovery is impermissible as the petitioners being Class-IV employees and payment was made pursuant to the order dated 4-10-2008. Thus, the orders passed by the respondent authority dated 25-8-2015 in respect of petitioner Shobnath Chand; 16-9-2015 in respect of petitioner Vidyadhar Singh, Rupan Sai, Ram Kumar Ram, Shivnarayan Ram, Ramlal Ram, Adhin Sai & Sudeshan Ram; 14-9-2015 in respect of petitioners Gurunarayan Singh & Kum. Elijabeth Ekka; 11-9-2015 in respect of petitioners Juwel Lakda & Beefnath Ram; 11-8-2015 in respect of petitioners Devnarayan Ram, Sevnath Singh & Bal Singh; 7-9-2015 in respect of petitioner Khageshwar Ram; 17-9-2015 in respect of petitioner Padamlochan Ram; 29-9-2015 in respect of petitioner Letangu Ram; and 11-9-2015 in respect of petitioner Visheshwar Ram, are in teeth of the law laid down by the Supreme Court in the afore-cited case and afore-stated orders are hereby quashed being impermissible in law. The writ petition is allowed accordingly.”

(3) Thus, the point raised in this writ petition has already been decided as such, the petition is allowed in terms of the order passed by this Court dated 26.10.2015 passed in W.P. (S) No. 3440/2015 and analogous cases and recovery orders are hereby quashed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-