

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4347 OF 2015**

Chandrika Prasad Patel S/o Shri Sakram Patel aged about 49 years Working as Peon Govt. Higher Secondary School Kotba Thana Police Chowky Kotba Tahsil Pathalgaon District Jashpur (CG)

---Petitioner**Versus**

1. State of Chhattisgarh through the Secretary Department of Aadim Jati & Anusuchit Jati Vikas Mahanadi Bhawan New Raipur (CG)
2. Commissioner Department of Aadim Jati & Anusuchit Jati Vikas Mahanadi Bhawan New Raipur (CG)
3. Collector Jashpur, District Jashpur (CG)
4. Principle Govt. Higher Secondary School Kotba District Jashpur (CG)

----Respondents**Writ Petition (S) No. 4349 OF 2015**

Meena Thakur W/o Gurwant Singh aged about 42 years Working as Peon Govt. Girls Higher Secondary School Kotba Thana Police Chowky Kotba Tahsil Pathalgaon District Jashpur (CG)

---Petitioner**Versus**

1. State of Chhattisgarh through the Secretary Department of Aadim Jati & Anusuchit Jati Vikas Mahanadi Bhawan New Raipur (CG)
2. Commissioner Department of Aadim Jati & Anusuchit Jati Vikas Mahanadi Bhawan New Raipur (CG)
3. Collector Jashpur, District Jashpur (CG)
4. Principle Govt. Higher Secondary School Kotba District Jashpur (CG)

----Respondents**Writ Petition (S) No. 4351 OF 2015**

Manmohan Krishna Sao S/o Shri Piladau Singh aged about 51 years Working as Peon Govt. Higher Secondary School Kotba Thana Police Chowky Kotba Tahsil Pathalgaon District Jashpur (CG)

---Petitioner**Versus**

1. State of Chhattisgarh through the Secretary Department of Aadim Jati &

Anusuchit Jati Vikas Mahanadi Bhawan New Raipur (CG)

2. Commissioner Department of Aadim Jati & Anusuchit Jati Vikas Mahanadi Bhawan New Raipur (CG)
3. Collector Jashpur, District Jashpur (CG)
4. Principle Govt. Higher Secondary School Kotba District Jashpur (CG)

----Respondents

AND

Writ Petition (S) No. 4354 OF 2015

Rohit Kumar Chouhan S/o Shri Nandram Chouhan aged about 40 years
Working as Peon Govt. Pri. Metric Boys Hostel Kotba Thana Police Chowky
Kotba Tahsil Pathalgaon District Jashpur (CG)

---Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Aadim Jati & Anusuchit Jati Vikas Mahanadi Bhawan New Raipur (CG)
2. Commissioner Department of Aadim Jati & Anusuchit Jati Vikas Mahanadi Bhawan New Raipur (CG)
3. Collector Jashpur, District Jashpur (CG)
4. Principle Govt. Higher Secondary School Kotba District Jashpur (CG)

----Respondents

For Petitioners	:	Mr. Manoj Chouhan, Advocate
For State/Respondents	:	Mr. Varun Sharma, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

23/11/2015

1. With the consent of learned counsel for the parties, the matters are heard finally.
2. Learned counsel for the petitioner would submit that the issue raised in these writ petitions is covered by decision rendered by this Court in Writ Petition (S) No.3440/2015 and analogous cases decided on 26/10/2015, in which, this Court in paragraphs-8, 9, 10 observed 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 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.”

9. In the above-stated judgment, Their Lordships of the Supreme Court have held that recovery from the employees belonging to Class-III 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 petitioners Ganesh Ram & Narayan Ram; 11-9-2015 in respect of petitioner Vidyadhar Singh; 10-9-2015 in respect of petitioners Saroj Kumar Karsh, 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 petitions are allowed accordingly.”

3. These writ petitions are disposed of in terms of order passed in Writ Petition (S) No.3440/2015 and analogous cases and recovery orders are hereby quashed.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Tiwari