

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3440 of 2015

Shobnath Chand, S/o Late Rajau Ram, aged about 51 years, R/o Village Ludega, Shikshak Colony, Tehsil Pathalgaon, Civil/ Revenue Distt. Jashpur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt. Raipur
2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh, Raipur, Distt. Raipur
3. Collector, Jashpur, Distt. Jashpur
4. Principal, Government Higher Secondary School, Ludega, Distt. Jashpur

---- Respondents

Writ Petition (S) No.3481 of 2015

1. Ganesh Ram Chouhan, S/o Bhousaram, aged about 45 years, R/o P.O. / Tehsil Kunkuri, District Jashpur (CG)
2. Narayan Ram, S/o Jagat Ram, aged about 40 years, R/o P.O./Tehsil Kunkuri, District Jashpur (CG)

---- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur
2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur, District Raipur
3. Collector, Jashpur, District Jashpur
4. Principal, Government Girls Higher Secondary School, Kunkuri, District Jashpur

---- Respondents

Writ Petition (S) No.3560 of 2015

Vidyadhar Singh @ Vidyadhar Ram, S/o Khulan Singh,
aged about 47 years, R/o P O Kurma, Tehsil Kunkuri P. S.
Narayanpur Civil / Revenue Dist. Jashpur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, Dist. Raipur
2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur, Dist. Raipur
3. Collector, Jashpur, Dist. Jashpur
4. Block Education Officer, Kunkuri, Dist. Jashpur

---- Respondents

WPS No.3519 of 2015

1. Saroj Kumar Karsh, S/o Late Sitaram Karsh, aged about 46 years, R/o Block Development Office, Kansabel, Distt. Jashpur
2. Rupan Sai, S/o Shobhan Sai, aged about 52 years, R/o Village Siharbud, P.O. Khutera Civil / Revenue Dist. Jashpur (CG)
3. Ram Kumar Ram Yadav, S/o Sarjuram, aged about 47 years, Village Changoribahar, Tehsil Kansabel, Civil/ Revenue Distt. Jashpur (CG)
4. Shivnarayan Ram, S/o Dhobsai, aged about 51 years, R/o Dandpani, P.O. Sagibhawna, Civi/ Revenue Distt. Jashpur (CG)
5. Ramlal Ram, S/o Sudhu Ram, aged about 37 years, R/o Village Muscuti, P.O. Banderchuwa, Tehsil Kansabel, Civil/Revenue Distt. Jashpur (CG)
6. Adhin Sai, S/o Late Amru Ram, aged about 48 years, R/o Village Kendutola, P.O. Badjor, Tehsil Kansabel, Civil/ Revenue Distt. Jashpur (CG)

---- Petitioners

Versus

1. State of Chhattisgarh, Through The Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, Dist Raipur
2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur, Distt. Raipur
3. Collector, Jashpur, Distt. Jashpur
4. Block Development Education Officer, Kansabel, Distt. Jashpur

---- Respondents

WPS No.3520 of 2015

Sudeshan Ram, S/o Bandhana Ram, aged about 45 years,
R/o Village Premnagar, P.O. Bataikela, Tehsil Kansabel,
Civil / Revenue Distt. Jashpur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur
2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur, District Raipur
3. Collector, Jashpur, District Jashpur
4. Principal, Government Higher Secondary School, Chatba, District Jashpur

---- Respondents

WPS No.3516 of 2015

Gurunarayan Singh, S/o Jatashanker Singh, aged about
39 years, R/o Village / PO Dandadi, P.S. Duldula, Civil/
Revenue Dist Jashpur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, Dist Raipur

2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur, Distt. Raipur
3. Collector, Jashpur, Distt. Jashpur
4. Block Development Education Officer, Duldula, Distt. Jashpur

---- Respondents

WPS No.3526 of 2015

Kumari Elijabeth Ekka, D/o Bisun Ekka, aged about 46 years, R/o High School Colony, Kansabel, Tehsil Kansabel, Civil / Revenue Distt. Jashpur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur
2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur, District Raipur
3. Collector, Jashpur, District Jashpur
4. Principal, Government Boys Higher Secondary School, Kansabel, District Jashpur

---- Respondents

WPS No.3523 of 2015

1. Juwel Lakda, S/o Joshep Lakda, aged about 47 years, R/o PO Narayanpur, Tehsil Kunkuri, Civil/Revenue Distt. Jashpur (CG)
2. Beefnath Ram, S/o Ramjan Ram, aged about 55 years, R/o PO/ Tehsil Kunkuri, Civil/ Revenue Distt. Jashpur (CG)

---- Petitioners

Versus

1. State of Chhattisgarh, Through The Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, Dist Raipur
2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur, Distt. Raipur

3. Collector, Jashpur, Distt. Jashpur
4. Block Education Officer, Kunkuri, Distt. Jashpur
---- Respondents

WPS No.3517 of 2015

1. Devnarayan Ram, S/o Jaynath Ram, aged about 36 years, Working in Govt. Boys Higher Secondary School, Kunkuri, PO/ Tehsil Kunkuri, Civil/ Revenue Distt. Jashpur (CG)
2. Sevnath Singh, S/o Jagdish Singh, aged about 38 years, Working in Govt. Boys Higher Secondary School, Kunkuri, PO/ Tehsil Kunkuri, Civil/ Revenue Distt. Jashpur (CG)
3. Balsingh, S/o Budhnath Singh, aged about 36 years, Working in Govt. Boys Higher Secondary School, Kunkuri, PO/ Tehsil Kunkuri, Civil/ Revenue Distt. Jashpur (CG)
---- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur
2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur, District Raipur
3. Collector, Jashpur, District Jashpur
4. Principal, Government Boys Higher Secondary School, Kunkuri, District Jashpur
---- Respondents

WPS No.3522 of 2015

Khageshwar Ram Chakresh, S/o Jaypal Ram, aged about 50 years, Working at Govt. Higher Secondary School Narayanpur, P.S. Narayanpur, Civil/ Revenue Distt. Jashpur (CG)
---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur

2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur, District Raipur
3. Collector, Jashpur, District Jashpur
4. Principal, Government Higher Secondary School, Narayanpur, District Jashpur

---- Respondents

WPS No.3521 of 2015

Padamlochan Ram, S/o Sudama Ram, aged about 48 years, R/o Village / PO Duldula, Tehsil Kansabel, Civil / Revenue Distt. Jashpur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur
2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur, District Raipur
3. Collector, Jashpur, District Jashpur
4. Principal, Government Higher Secondary School, Kardega, District Jashpur

---- Respondents

WPS No.3637 of 2015

Letangu Ram, S/o Bandhanu Ram, aged about 46 years, R/o Village/ PO Manora, Civil/ Revenue Distt. Jashpur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur
2. Commissioner, Department of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur, District Raipur
3. Collector, Jashpur, District Jashpur

4. Principal, Government Higher Secondary School, Manora,
District Jashpur

---- Respondents

AND

WPS No.3698 of 2015

Visheshwar Ram @ Bisheshwar Ram, S/o Bitul Ram, aged
about 48 years, R/o Village / PO Kunkuri, Civil / Revenue
District Jashpur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, Department
of Aadim Jati & Anusuchit Jati Vikas, Mantralaya,
Mahanadi Bhawan, Naya Raipur, Dist Raipur
2. Commissioner, Department of Aadim Jati & Anusuchit Jati
Vikas, Chhattisgarh Raipur, Distt. Raipur
3. Collector, Jashpur, Distt. Jashpur
4. Block Education Officer, Kunkuri, Distt. Jashpur

---- Respondents

For Petitioners:	Mr. H.S. Ahluwalia, Advocate.
For Respondents/State:	Mr. Y.S. Thakur, Deputy Advocate General with Mr. Sangharsh Pandey, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/10/2015

1. Common question of law and fact is involved in these writ
petitions, therefore, they are heard analogously and are
being decided by this common order.
2. The matters are listed for admission, but with the consent
of parties, the writ petitions are heard finally.

3. The petitioners are working as Peons (Class-IV) in different schools and hostels under the Department of Aadim Jati and Anusuchit Jati Vikas in District Jashpur. They were regularized by the Department by order dated 4-10-2008 and were held entitled for regular pay-scale on completion of ten years service and accordingly, benefits were granted to them and they were given higher pay-scale. Thereafter, by order dated 16-9-2014, the said benefit has been withdrawn and the order of recovery has been made against the petitioners against which these petitions have been filed claiming inter alia that no fraud or misrepresentation has been played by the petitioners herein and if wrong fixation of pay has been made by the State Government, it cannot be recovered from the petitioners, as they are Class-IV employees and their case is covered by the law laid down by the Supreme Court in the matter of **State of Punjab and others v. Rafiq Masih (White Washer) and others**¹.

4. Mr. H.S. Ahluwalia, learned counsel for the petitioners, would submit that the petitioners are Class-IV employees and it is not the case that the petitioners have played any fraud or misrepresentation in order to get the benefit, therefore, such a recovery is expressly held to be

¹ (2015) 4 SCC 334

impermissible by the Supreme Court in **Rafiq Masih's** case (supra).

5. Mr. Y.S. Thakur, learned Deputy Advocate General, would submit that recovery against the petitioners is being made on installments taking care of the hardship being caused to them in making payment of the said amount and the petitioners did not work on the post for which they had been paid and, therefore, such an amount can be rightly directed to be recovered from the petitioners.
6. I have heard learned counsel for the parties.
7. It is not in dispute that the petitioners are working on the post of Peon (Class-IV). It is also not in dispute that regular pay-scale was paid to the petitioners, but there is no allegation that the petitioners played any fraud or made any misrepresentation in order to get payment of higher pay-scale, that has been granted to the petitioners by the State Government and the said amount has been paid to them by order dated 4-10-2008.
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 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.”

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.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma