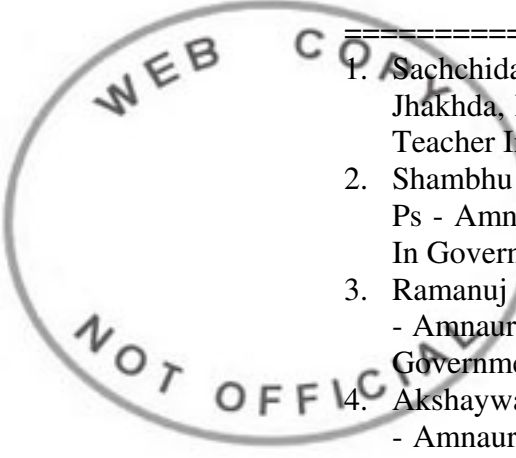


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4488 of 2013

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1. Sachchidanand Singh S/O Late Tez Narayan Singh Resident Of Village + Po - Jhakhda, Ps - Amnaur, District Saran At Chapra, Presently Posted As Assistant Teacher In Government Basic School, Nautan, District Saran At Chapra
 2. Shambhu Singh S/O Late Ramayan Singh Resident Of Village + Po - Jhakhda, Ps - Amnaur, District Saran At Chapra, Presently Posted As Assistant Teacher In Government Basic School, Nautan, District Saran At Chapra
 3. Ramanuj Singh S/O Late Manik Singh Resident Of Village + Po - Pahadpur, Ps - Amnaur, District - Saran At Chapra, Presently Posted As Assistant Teacher In Government Basic School, Nautan , District Saran At Chapra
 4. Akshaywat Tiwari S/O Late Madhusudan Tiwari Resident Of Village + Po + Ps - Amnaur, District Saran At Chapra , Presently Posted As Assistant Teacher In Government Basic School, Nautan District Saran At Chapra
 5. Kumar Amrendra S/O Late Ram Pravesh Tiwari Resdient Of Village - Gammepatti, Po - Shobhepur, Ps - Bheldi, District - Saran At Chapra, Presently Posted As Assistant Teaceher In Government Basic School, Mandauli
 6. Vidya Bhushan Mahto S/O Late Satya Narayan Mahto Resident Of Village + Po - Apher, Ps - Amnaur, District Saran At Chapra, Presently Posted As Assistant Teacher In Government Basic School, Mandauli
 7. Shivjee Rai S/O Late Bhikari Rai Resident Of Village + Po - Dumri Chhapi, Ps Taraiya, District Saran At Chapra, Presently Posted As Assistant Teacher In Government Basic School, Mandauli
 8. Jai Ram Tiwari S/O Late Dineshwar Tiwari Resident Of Village - Dharhara, Po - Dharhara, Ps - Amnaur, District Saran At Chapra, Presently Posted As Assistant Teacher In Government Basci School, Mandauli
 9. Md. Hasim Ansari S/O Late Nathuni Miyan Resident Of Village - Gawandri, Po - Madarpur, Ps - Bheldi, District Saran At Chapra, Presently Posted As Assistant Teacher In Government Basic School, Mandauli
 10. Md. Mahiuddin S/O Late Nazir Hussain Resident Of Village - Baharmaar, Po - M. Kuari, Ps - Parsa, District Saran At Chapra, Presently Posted As Assistant Teacher In Government Basic School, Dihi
 11. Sakaldeo Singh S/O Late Brisha Singh Resident Of Village + Po - Narharpur, Ps - Marhaurah, District Saran At Chapra, Presently Posted As Assistant Teacher In Government Basic School, Aghara
 12. Shailesh Kumar Pandey S/O Shri Baidya Nath Pandey Resident Of Village - Machhagra, Po - Bhatti Shahabuddin, Ps - Baniyapur, District Saran At Chapra, Presently Posted As Assistant Teacher In Government Basic School, Aghara
 13. Amar Nath Singh S/O Late Sahdeo Singh Resident Of Village + Po - Badi Musehri, Ps - Chapra Mufassil, District Saran At Chapra, Presently Posted As Assistant Teacher In Government Basic School, Aghara
 14. Hari Narayan Sharma, Presently Posted As Assistant Teacher In Government Basic School, Ferusa
 15. Anand Kumar, Presently Posted As Assistant Teacher In Government Basic School, Ferusa
 16. Bimal Sinha, Presently Posted As Assistant Teacher In Government Basic School, Ferusa
 17. Birendra Kumar Rai, Presently Posted As Assistant Teacher In Government Basic School, Ferusa
 18. Arun Kumar Yadav, Presently Posted As Assistant Teacher In Government

- Basic School, Ferusa
19. Md. Munir, Presently Posted As Assistant Teacher In Government Basic School, Ferusa
20. Kumar Anand Bhushan Pathak, Presently Posted As Assistant Teacher In Government Basic School, Ferusa
21. Pradeep Kumar Yadav, Presently Posted As Assistant Teacher In Government Basic School, Rasulpur
22. Sunil Dutt Ram, Presently Posted As Assistant Teacher In Government Basic School, Rasulpur
23. Vimla Kumari, Presently Posted As Assistant Teacher In Government Basic School, Karcholiya
24. Upendra Kumar Rai, Presently Posted As Assistant Teacher In Government Basic School, Karcholiya
25. Gajendra Nath Trivedi, Presently Posted As Assistant Teacher In Government Basic School, Kawalpura
26. Vishodha Manjhi, Presently Posted As Assistant Teacher In Government Basic School, Kawalpura
27. Aash Narayan Singh, Presently Posted As Assistant Teacher In Government Basic School, Pokhraise
28. Birendra Kumar Sharma, Presently Posted As Assistant Teacher In Government Basic School, Pokhraise
29. Nawal Kishore Singh, Presently Posted As Assistant Teacher In Government Basic School, Pokhraise
30. Gyan Deo Singh, Presently Posted As Assistant Teacher In Government Basic School, Aghara
31. Vijay Kumar Singh, Presently Posted As Assistant Teacher In Government Basic School, Aghara
32. Ram Pukar Singh, Presently Posted As Assistant Teacher In Government Basic School, Aghara
33. Pankaj Kumar, Presently Posted As Assistant Teacher In Government Basic School, Bansohi
34. Omkar Prasad Singh, Presently Posted As Assistant Teacher In Government Basic School, Hansapeer
35. Harendra Prasad Singh, Presently Posted As Assistant Teacher In Government Basic School, Mastichak, Ps - Parsa
36. Raj Narayan Rai S/O Late Ram Naresh Ray Presently Posted As Assistant Teacher In Presently Posted At Government Basic School, Mastichak, Block Parsa
37. Bacha Lal Sah S/O Shri Kedar Nath Sah Presently Posted As Assistant Teacher In Presently Posted At Government Basic School
38. Asha Kumari Sinha W/O Janardan Singh Village + Po - Sikti Bhikham, Ps - Mashraikh, Presently Posted As Assistant Teacher In Government Basic School, Doila, District Saran At Chapra
39. Indu Sharma W/O Shri Rahul Kumar Sharma Presently Posted As Assistant Teacher In Government Basic School, Balua
40. Madhumala Kumari W/O Shri Suresh Pandey Presently Posted As Assistant Teacher In Government Basic School, Balua
41. Baleshwar Prasad Singh, Presently Posted As Assistant Teacher In Government Basic School, Doila, District Saran At Chapra
42. Murli Manohar Singh S/O Late Akshaywat Nath Singh Resident Of Village + Po + Ps - Mashraikh, District Saran At Chapra

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna
2. The Principal Secretary, Education Department, Government Of Bihar, Patna
3. The Principal Secretary, Finance Department, Government Of Bihar, Patna
4. The Director (Primary Education), Department Of Education, Government Of Bihar, Patna
5. Regional Deputy Director Of Education, Saran Division, Chapra
6. The District Education Officer, District Saran At Chapra
7. The District Program Officer (Establishment) , Saran At Chapra
8. District Accounts Officer, Saran At Chapra
9. Treasury Officer, Saran At Chapra

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Adv.

For the Respondent/s : Mr. Manish Kumar, GP-8

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 29-03-2016

Heard learned counsel for the petitioner and counsel for the State.

In this case the petitioner, for the first time, has made a claim that his pay-scale was rightly fixed in terms of the 6th Pay Revision Committee report and the claim made by the respondents that the same should be fixed in Scheduled-1 is completely incorrect but at the later stage, learned counsel for the petitioners has submitted that the view that has been taken by the authority with regard to pay fixation cannot be assailed as it did not find any error in the decision of the respondent authority and, this Court, in this regard, has passed an order on 15.3.2016 which reads as follows:-

“Learned counsel for the petitioners submits that he would not press this application with respect

to fixation of pay-scale and would only raise a grievance that as the petitioner had not misrepresented or played fraud in fixation of his salary, in such view of the matter, the respondents should not be permitted to make recovery of the excess amount paid to them.”

In view of the aforesaid order, very limited question has been left to be decided by this Court is as to whether the recovery order passed by the respondent authorities requires interference? There is a long line of judgments of Hon'ble Apex Court with regard to recovery of excess payment starting from *Sahib Ram Vs. State of Haryana (1995) Suppl. (1) SCC 18*, *Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors. 2009 (2) PLJR (SC) 74* and further judgments are not required to be multiplied but, one judgment which differs from earlier view is required to be looked into i.e. judgment passed in the case of *Chandi Prasad Uniyal & Ors. Vs. State of Uttarkhand & Ors.* reported in *2012(8)SCC 417*. In this case, the Court has taken a view that if any wrong payment has been made, then it requires a recovery as non-adjustment of the amount will led to unjust enrichment. It is hardly any matter whether the payment has been made on the basis of fraud or misrepresentation or any other manner as it is a tax payer money which cannot be allowed to fritter away by making excess payment. There is another judgment of this Court also with regard to recovery



of payment in the case of *Harendra Prasad reported Gupta Vs. The Union of India & Ors.* in *2015(1) PLJR 101* wherein placing reliance on the judgment in the case of Chandi Prasad Uniyal case (supra) in paragraph no.26, the Court has quoted certain paragraphs in extenso held realization of the excess amount paid to an employee is a correct approach but, at the later stage, there is a judgment of Supreme Court in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer)* reported in *2014(4) PLJR 36* and in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc.* reported in *2015(1) PLJR (SC) 261* there the Court has summarized that in all the situation, the respondent authorities are not to be allowed to make recovery from the person to whom excess amount has been made. It would be relevant to quote paragraph no.12 of such judgment, which reads as follows:-

“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 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.”

Learned counsel for the petitioners has also placed reliance specially that if an excess payment has been made for five years before the order of recovery, in such circumstances, the respondents should not be allowed to make recovery from the person to whom the excess amount has been made. He has put an emphasis that payment of recovery of five years will be counted from the date of fixation and not from the date of actual payment was made to the petitioner. On that basis, learned counsel for the petitioners has submitted that such payment was made in terms of the 6th Pay Revision Committee report with effect from 1.4.2007 though the payment has been made on different months before passing the order of recovery by the authority. This submission is fallacious as it will not be seen payment has been made of which period, but it has to be seen as to when the payment has been made. If there is a gap of more

than five years in that circumstance the case would fall in the category of item no.3 of the Rafiq Masih case (supra).

This Court cannot approve the proposition that has been led by the learned counsel for the petitioners as on perusal of this Item No.3, it is clear that it will be applicable to those class of persons where the person has been paid continuously for five years and if there is a gap of five years in between the excess payment and the order of recovery, in that circumstances, the Hon'ble Supreme Court has put a bar from recovery of the said amount but, from perusal of the order impugned, it appears that recovery has been ordered within five years i.e. some orders have been passed in the year 2010 and some orders have been passed in the year 2011 and 2012. Petitioners are in active service and it will not be inequitable and illegal to allow recovery of excess amount.

In that view of the matter, this Court does not find any error in the impugned order and this writ application is, accordingly, dismissed.

(Shivaji Pandey, J)

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