

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 46 of 2012

- Suraj Bhan Patar, son of Dasrath Ram Patar, aged about 49 years, working as Lecturer, Govt. Girls Indira Gandhi Higher Secondary School, Patthalgaon, District Jashpur, Chhattisgarh

----- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Education Department, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh.
2. District Education Officer, Jashpur, District Jashpur, Chhattisgarh.
3. Block Education Officer, Patthalgaon, District Jashpur, Chhattisgarh
4. Joint Director, Accounts, Treasury and Pension, Ambikapur, District Sarguja, Chhattisgarh.

----- Respondent

For Petitioner : Shri CJK Rao, Advocate.

For Respondents : Shri S. Majid Ali, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

01/03/2016

1. The petitioner is working as Lecturer in the Government Girls Indira Gandhi Higher Secondary School, Patthalgaon, District Jashpur. He has called in question the impugned recovery of Rs.82,635/- by way of making endorsement in his service book without passing separate orders and giving opportunity of

hearing to the petitioner.

2. Learned counsel for the petitioner would submit that recovery is on account of excess payment due to wrong fixation of pay scale from 20.10.1986 onwards, however, the petitioner has never made any representation nor claimed pay scale granted to him with effect from 20.10.1986, therefore, there being no fraud or misrepresentation by him, the impugned recovery which is otherwise made without following principles of natural justice deserves to be quashed.
3. Learned State Counsel would submit that when the petitioner was not at all entitled for pay scale wrongly granted to him, question of making any fraud or misrepresentation was not applied and the recovery is fully justified.
4. In the matter of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others**¹, the Supreme Court has held thus in para 18:-

“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

¹ (2015) 4 SCC 334

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."

5. In the present case also, impugned recovery is for payment which was made to the petitioner more than 5 years back. Moreover, no opportunity of hearing has been granted to the petitioner before making the subject recovery. Therefore, applying the law laid down in the matter of **Rafiq Masih** (Supra), the Writ Petition is allowed and the impugned recovery is quashed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve