

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 2239 of 2012**

Sahoran Lal Sriwas S/o Late Ramsul Shriwas, Peon at Govt. Engineering College, Bilaspur, R/o Vill. Pendarba, Post & Thana Ratanpur, Distt. Bilaspur, CG

---- Petitioner**Versus**

1. The State of Chhattisgarh through its Secretary, Department of Technical Education, Dau Kalyan Singh Bhavan, Raipur, CG
2. Director, Technical Education, Raipur, CG
3. The Principal, Government Engineering College, Bilaspur, CG

---- Respondents

For Petitioner	:	Shri Akhilesh Kumar, Advocate
For Respondents	:	Smt. Smita Ghai, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****10 /05/2016**

The petitioner who is a peon under the Respondent No.3 through the instant writ petition has challenged the order dated 01.03.2012 Annexure P-2 whereby it has been directed to recover a sum of Rs. 1,08,527 from the salary of the petitioner in 26 installments holding it to be excess payment made to him.

2. Counsel for the petitioner submits that the said recovery is being illegally made by the respondents and the petitioner has never been heard before passing of the order of recovery i.e. Annexure P-2. He submits that the petitioner is not at fault if at all he has received any excess payment and that unless there is any misrepresentation on the part of the petitioner, the respondents could not have initiated any action of recovery against the petitioner. He further submits that the case of the petitioner is squarely covered by a decision of this High Court in W.P.(S) No. 1495 of 2013 dated

10.02.2015 wherein under similar set of facts the order of recovery initiated by the State Govt. against the petitioner therein has been set aside/quashed.

3. The said judgment of this High Court was based upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** reported in **(2014) 8 SCC 883** wherein the Supreme Court has in very categorical term laid down the circumstances wherein recoveries have been made impermissible in law:

- “i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D').
- 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 employees 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.”

The case of the petitioner who is a peon and is a Class IV Group 'D' employee squarely falls within the said category of the employees referred to in the preceding paragraphs.

4. Taking into consideration the order passed by the Supreme Court as well as the order of this High Court passed in W.P.(S) No. 1495 of 2013 dated 10.02.2015, the instant writ petition also deserves to be and is allowed.

5. Accordingly, the impugned order of recovery passed by the respondents to recover a sum of Rs. 1,08,527 from the salary of the petitioner in 26

installments stands quashed and the amount already recovered shall be refunded to the petitioner forth with.

6. The instant writ petition stands allowed and disposed of.

**Sd/-
P. Sam Koshy
Judge**