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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 4290 of 2013

Ram Krishna Sahu S/o Late Shri B.S. Sahu aged about 61 years 8 months Head Master Govt. Boys Primary School Rajim Post Thana and Tahsil Rajim Distt Gariyaband (CG)

---Petitioner

Versus

1. State of Chhattisgarh through the Secretary School Education Department Mahanadi Bhawan New Raipur (CG)
2. District Education Officer Raipur District Raipur (CG)
3. District Education Officer Gariyaband District Gariyaband (CG)
4. Block Education Officer Block Fingeshwar District Gariyaband (CG)
5. Joint Director Treasury Account and Pension Raipur District Raipur (CG)

---Respondents

Writ Petition (S) No. 190 of 2014

Gulam Ishak Khan S/o Shri Gulam Papa Khan aged about 58 years Head Master Govt. Primary School Banglabhatho (Kirwai) Post Thana Fingeshwar Tahsil Rajim District Gariyaband (CG)

---Petitioner

Versus

1. State of Chhattisgarh through the Secretary School Education Department Mahanadi Bhawan New Raipur (CG)
2. District Education Officer Gariyaband District Gariyaband (CG)
3. Block Education Officer Block Fingeshwar District Gariyaband (CG)

---Respondents

Writ Petition (S) No. 206 of 2014

Mannu Lal Yadu S/o Shri Ram Khilawan Yadu aged about 57 years Head Master Govt. Primary Schol Bangva Post Thana Figeshwar Tahsil Rajim District Gariyaband (CG)

---Petitioner

Versus

1. State of Chhattisgarh through the Secretary School Education Department Mahanadi Bhawan New Raipur (CG)
2. District Education Officer Gariyaband District Gariyaband (CG)
3. Block Education Officer Block Fingeshwar District Gariyaband (CG)

---Respondents

Writ Petition (S) No. 208 of 2014

Bhulu Ram Hirwani S/o Shri Raja Ram Hirwani aged about 58 years Head Master Govt. Primary School Beltukuri Post Beltukuri Thana and Tahsil Rajim District

Gariyaband (CG)

---Petitioner

Versus

1. State of Chhattisgarh through the Secretary School Education Department Mahanadi Bhawan New Raipur (CG)
2. District Education Officer Gariyaband District Gariyaband (CG)
3. Block Education Officer Block Fingeshwar District Gariyaband (CG)

---Respondents

AND

Writ Petition (S) No. 209 of 2014

Mohan Lal Sinha S/o Shri Ghuruwa Ram Sinha aged about 61 years Head Master Govt. Primary School Kamarpara Post Tarighat Thana Chhuiha Tahsil Rajim District Gariyaband (CG)

---Petitioner

Versus

1. State of Chhattisgarh through the Secretary School Education Department Mahanadi Bhawan New Raipur (CG)
2. District Education Officer Gariyaband District Gariyaband (CG)
3. Block Education Officer Block Fingeshwar District Gariyaband (CG)

---Respondents

For Petitioners	:	Mr. Somkant Verma, Advocate
For Respondents	:	Mr. Yashwant Singh Thakur, Dy. Advocate General with Mr. Dilmanrati Minj, Dy. Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/01/2016

1. The petitioners are Head Masters in the Primary Schools. The petitioners jointly filed **Writ Petition (S) No.6291 of 2007** (*Bhulu Ram Hirwani and Others v. State Govt. of Chhattisgarh and Others*) decided on 15/10/2007, which was allowed in terms of **Writ Petition (S) No.813 of 2007** (*Ram Kumar Sahu and Others v. State Govt. of Chhattisgarh and Another*) granted regular pay scale with effect from the date of initial appointment subject to all verifications made by the State regarding facts pleaded in the petition. Thereafter, circular was issued and the petitioners were granted benefit of regular pay scale with effect from their date of initial appointment. The benefit of regular pay scale from the date of their initial appointment was cancelled by order dated 18/09/2013 and the amount

of arrears was directed to be recovered against the petitioners in ten installments.

2. Against which, instant writ petitions filed by the petitioners stating *inter alia* that no fraud or misrepresentation has been played by the petitioners and if benefits have wrongly granted to them, it cannot be recovered from the petitioners as they are Class-III employees and their case is covered by the law laid down by the Supreme Court in the matter of **State of Punjab v. Rafiq Masih (White Washer) and Others**¹.

3. Learned counsel for the petitioners would submit that petitioners are Class-III 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 impermissible by the Supreme Court in *Rafiq Masih's case (supra)*.

4. Learned counsel for the State would oppose the writ petitions.

5. I have heard learned counsel for the parties.

¹ (2015) 4 SCC 334

6. It is not in dispute that the petitioners are working on the post of Head Masters (Class-III). 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.

7. 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."

8. 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.

9. The fact remains in the present cases that earlier petitioners filed writ petition which was allowed in terms of order in the matter of *Ram Kumar Sahu (supra)*. Thereafter, State Government granted benefit of regular pay scale to the petitioners and it is not the case that the petitioners have played any fraud or made any misrepresentation in order to get payment of higher pay scale. The petitioners are Class-III employees and their case is covered by the decision rendered by the Supreme Court in the matter of *Rafiq Masih (supra)*.

10. In view of the above, writ petitions are allowed and the order dated 18/09/2013 (Annexure P/2) relating to the present petitioners shall stand quashed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
JUDGE