NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 39 of 2016

1. Santosh Prasad Shukla son of Anjani Prasad, aged about 44 years, Working as Peon, Office of Block Education Officer, Jashpur Nagar, District Jashpur, Chhattisgarh.
2. Shrikant Mishra son of Late Shri Vishveshwar Prasad Mishra, aged about 39 years, Working as Peon, Govt. Middle School, Balachhapar, District Jashpur, Chhattisgarh.

---- Appellants

Versus

1. State of Chattisgarh, Through the Secretary, Scheduled Caste and Scheduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, Chhattisgarh.
2. The Commissioner, Department of Scheduled Caste and Scheduled Tribe Development Chhattisgarh, Raipur, Chhattisgarh.
3. The Collector (Scheduled Tribe Welfare Branch) District Jashpur, Chhattisgarh.
4. The Block Education Officer, Jashpur Nagar, District Jashpur, Chhattisgarh.

---- Respondents

For Appellants : Shri Harish Khuntiya, Advocate.
For Respondent/State : Shri Gary Mukhopadhyay, Deputy Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

01/02/2016

1. The present appeal assails order dated 15.1.2016 allowing Writ Petition (S) No. 4738 of 2015 permitting the Respondents to make recovery afresh in accordance with law of the excess payments made to the Appellants.

2. Learned Counsel for the Appellants submits that the Appellants are Class-IV employees working as Peons in the Office of Block Education Officer, Jashpur and Government Middle School, Balachhapar, Jaspur. They were regularised by

an order dated 4.10.2008 w.e.f 11.9.2008 and eligible for regular pay scale but the authorities granted them regular pay scale from the date that they completed 10 years of service in 2006. The Appellants may at best be liable to excess payment received from 2006 to 10.9.2008. The impugned order dated 25.8.2015 is therefore arbitrary to the extent that it directs recovery of regular pay scale paid to them from 22.8.2006 till 31.7.2015. The question of effecting any recovery after 11.9.2008 does not arise in view of the order dated 25.8.2015. Relying on (2015) 4 SCC 334 [State of Punjab v. Rafiq Masih (White Washer)], it is submitted that no recovery can be made from the Appellants as they were holding class IV posts and have already spent the money on survival of themselves and their family. Reliance was also placed on similar orders dated 26.10.2015 prohibiting recovery of excess payment made to Class IV employees relying on Rafiq Masih (supra) in W.P.(S) No. 3440 of 2015 and analogous cases and W.P.(S) No. 4368 of 2015 dated 24.11.2015.

3. Learned Counsel for the State submits that recovery has been ordered till 31.7.2015 on the basis that the Appellants are equally not entitled to any increments or revision of pay scale as may have existed on 22.8.2006 given to them. The Respondents cannot be precluded from correcting the pay scale prospectively, if required.

4. We have considered the submissions on behalf of the parties.

5. The case of the Appellants appears to be similarly situated as orders dated 26.10.2015 and 24.11.2015. In Rafiq Masih (supra) it was observed as follows:

> "15...A perusal of the aforesaid observations made by this Court in B.J.Akkara case reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from the employees in lower rung of service, would result in extreme hardship

> to them. The apparent explanation for the aforesaid conclusion is, that the employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding that such recovery from employees belonging to the lower rungs (i.e. Class III and Class IV - sometimes denoted as Group C and Group D) of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India. "

6. The impugned order is therefore held to be unsustainable to the extent that it permits recovery against the Appellants but without prejudice to the rights of the Respondents with regard to revision of any pay scale prospectively.

7. The appeal is allowed to the extent indicated.

Sd/-	Sd/-
(Navin Sinha)	(P. Sam Koshy)
CHIEF JUSTICE	**JUDGE**

Anu