

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 1526 of 2010

1. Falesh Kumar Sahu S/o Shri Firantadas Sahu, Shiksha Karmi Class II, Government Middle School, Musra, Block Dongargarh, District – Rajnandgaon (C.G.)
2. Lata Lillhare W/o Shri Chhatrapal Lillhare, Shiksha Karmi Class II, Govt. Middle School, Chhipa, Block Dongargarh, Distt. Rajanndgaon (Cg)
3. Gurucharan Netam S/o Shri Gulab Singh, Shiksha Karmi Class II, Govt. Middle School, Lal Bahadur Nagar, Block Dongargarh, Distt. Rajanndgaon (Cg)
4. Gopiram Verma S/o Shri Barsan Verma, Shiksha Karmi Class II, Govt. Middle School, Dhara, Block Dongargarh, Distt. Rajanndgaon (Cg)
5. Hiraram Lodhi S/o Shri Siyaram Lodhi, Shiksha Karmi Class II, Govt. Middle School, Belgoan, Block Dongargarh, Distt. Rajanndgaon (Cg)
6. Vimla Rajeker W/o Shri Shiv Kumar Rajeker, Shiksha Karmi Class II, Govt. High School, Kirgi, Block Dongargarh, Distt. Rajanndgaon (Cg)
7. Bhojram Dhurve S/o Shri Samaylal Dhurve, Shiksha Karmi Class II, Govt. High School, Devkatta, Block Dongargarh, Distt. Rajanndgaon (Cg)
8. Shravan Kumar Yadu S/o Shri Samaru Ram Yadu, Shiksha Karmi Class II, Govt. High School, Ramatola, Block Dongargarh, Distt. Rajanndgaon (Cg)

---- Petitioners

Versus

1. State Of Chhattisgarh Through: Secretary, Panchayat & Village Development, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Chief Executive Officer, Jila Panchayat Rajnandgaon, Distt. Rajnandgaon (C.G.)
3. Chief Executive Officer, Panchayat Dongargarh, Distt. Rajnandgaon (C.G.)

---- Respondents

For Petitioners:

Ms. Dipali Pandey, Advocate.

For Respondents/State:

Mr. A.S. Kachhawaha, Additional Advocate

General along with Ms. S. Ghai, Panel Lawyer

Single Bench: Hon'ble Shri P. Sam Koshy, J

Order On Board

04.08.2016

The limited challenge through the present petition by the Petitioners is to Annexure P/1, the order dated 04.08.09 issued by Chief Executive Officer of Jila Panchayat, Rajnandgaon, wherein the respondents have ordered for recovery of certain excess amount having paid to the Petitioners on account of the

weightage being granted while calculating the length of service of the Petitioner.

2. Learned Counsel for the petitioners submits that the petitioners are currently Shiksha Karmi Grade II who have been promoted from the post of Shiksha Karmi Grade III on 02.06.2006. Certain amount on account of the weightage on the basis of their length of service were paid to the Petitioners. However, vide the impugned order, a notice of recovery has been issued stating that they have been wrongly granted the weightage benefits, directing the petitioners to make the payment to the respondents. She further submits that it is not a case where the said alleged excess amount paid to the petitioners have been obtained by any misrepresentation or fraud played by the petitioners and that if at all the such amounts have been received by the petitioners, the same was on account of the error on the part of the respondents and for which the petitioners, cannot be penalized by issuing the said order of recovery.

3. Learned State counsel, opposing the writ petition submits that it is a case where the respondents were by mistake paid certain excess amount which otherwise the petitioners were not entitled as per the rules and therefore, the order of recovery issued by the respondents is justified and is in accordance with the Rules.

4. The law in respect of the recovery is by now well settled by a catena of decisions starting from **1995 SCC, Supl. (1) 18 JT 1995 (1) 24** in the case of **Sahib Ram Vs. The State of Haryana and Others** and the most recent being the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** reported in **2015 AIR SCW 501**, wherein it has been repeatedly and in very categorical terms held by the Supreme Court that in the event if any excess payment has been paid to an employee for no fault of the employee and the said amount has been paid to him without there being any misrepresentation or fraud played by the employee, the recovery of the said amount would be

improper on the part of the employer. It has been held in paragraphs-11 & 12

as under:-

“11. Recovery of excess payment, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

“12. xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx

(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.”

5. The Supreme Court has very categorically held that recovery on part of the employees particularly from the employees who are class III or IV should not be made.

6. Learned Additional Advocate General on perusal of the records accepts

that the matter is squarely covered by the judgment of the Supreme Court so far as the recovery part is concerned. He however, prays for reserving right of the State Government for carrying out necessary rectification.

7. In view of the above given facts and also keeping in view the decisions of Hon'ble the Supreme Court referred to in the earlier paragraphs, the present petition deserves to be allowed.

8. The impugned order Annexure P-1 to the extent of issuance of recovery is set aside and quashed. Consequently, the instant petition is allowed. No order as to costs.

Sd/-
(P. Sam Koshy)
J U D G E