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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5515 of 2012**

1. Laxminath Sakariya S/o Nakul Sakariya Aged About 28 Years Asst. Teacher (Panchayat) Prim. School Lafinkhurd Thana & Dist. Mahasamund C.G.
2. Bhuneshwar Prasad Sahu S/o Mehatruram Sahu Teacher (Panchyat), Middle School Umrada, Thana Mahasamund, Dist Mahasamund, C.G.
3. D.R.Dhruv S/o Shivram Dhruv Asstt. Teacher (Panchayat), Primary School Parsadih Thana Mahasamund Distt Mahasamund, C.G.
4. Ganesh Ram Chandrakar S/o Bhagwani Chandrakar Teacher (Panchyat), Behind Collectorate Ward No. 22,, Thana Mahasamund, Dist Mahasamund, C.G.
5. Pokhan Lal Chandrakar S/o Samaru Ram Chandrakar Teacher (Panchayat) Behind Collectorate Ward No. 22, Thana Mahasamund Distt Mahasamund, C.G.
6. Mrs Gyatri Chandrakar D/o Pokhan Lal Chandrakar Asstt. Teacher (Panchayat), Primary School Kharora Thana Mahasamund Distt Mahasamund, C.G.
7. Chetan Kumar Gayakwaard S/o Sukhe Lal Gayakward Teacher (Panchayat) Govt. Middle School Parasadih, Thana Tumgaon, Distt Mahasamund, C.G.
8. Navin Kumar Chandrakar S/o Ganesh Ram Chaandrakar Lecturer (Panchayat) Middle School Saradih, Thana Mahasamund, Distt Mahasamund,C.G.
9. Kanhaya Lal Sahu S/o Khelawand Sahu Teacher (Panchayat) Middle School Saradih, Thana Mahasamund, Distt Mahasamund,C.G.
10. Mahesh Kumar Yadav S/o Rikhiram Yadav Teacher (Panchayat) Middle School Pachri, Thana Tumgaon, Distt Mahasamund, C.G.
11. Tarendra Kumar Chandrakar S/o Mohan Chandrakar Assistant Teacher (Panchayat), Asstt Teacher (Panchayat) Primary School Achiridih Thana Tumgaon, Distt Mahasamund,C.G.
12. Bhikham Kashyap S/o Rajaram Chandrakar Teacher (Panchayat), Middle School Umarda, Thana Mahasamund Distt Mahasamund, C.G.

---- Petitioner**Versus**

1. State Of Chhattisgarh S/o Thru The Secretary Panchayat & Social Welfare Department New Mantralaya Bhawan Raipur P.S. Rakhi Raipur C.G.
2. Block Education Officer Mahasamund, P.S. City Kotwali, Distt Mahasamund, C.G.

---- Respondents

For Petitioners:

Mr. Ajay Shrivastava, Advocate

For State :

Mr. B. Gopa Kumar, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order on Board****02.03.2017**

1. The present Petition has been preferred not against any specific order but what is under challenge is an action on part of the Respondents, wherein while issuing of the pay slip it was reflected that certain amount which has been paid to the Petitioners by way of excess payment is being recovered from the monthly salary of the Petitioners.
2. Learned Counsel for the Petitioners submits that before making any deduction no notice whatsoever has been issued to the Petitioners at any point of time. He further submits that it is not the case of the Respondent State where the said excess payment which has been made to the Petitioner was because of any misrepresentation or fraud played by the present Petitioners. He further submits that even if any excess payment has been made that is on account of sheer error and mistake on part of the Respondent authorities for which the Petitioner cannot be blamed nor can they be saddled with the recovery of the excess amount paid to the Petitioners on account of error committed by the Respondents.
3. Learned Counsel for the State however submits that the recovery had to be made in the case on account of the audit objection that Petitioners have been paid certain excess amount. On account of the audit objection in respect of the excess payment the authorities had no other option but to recover the excess amount from each of the Petitioners. He further submits that the Petitioners can not retain the money which otherwise they were not entitled to receive. If such excess amount has been paid, the employer has every right to recover the same. It is not the case that the Petitioners are retired employees but they are still serving and therefore since the error has

been detected by the Respondents in respect of the wrong fixation of the pay to the Petitioners during their service period, the Respondents have every right to recover the same.

4. Having considered the rival contention put forth on either side and on perusal of the record, so far as the recovery issue is concerned law by now is well settled right from **1995 SCC, Supl. (1) 18 JT 1995 (1) 24** in the case of **Sahib Ram Vs. The State of Haryana and Others** to the most recent case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** reported in **2015 AIR SCW 501**.
5. The Hon'ble Supreme Court has laid down broad guidelines, in respect of the situations under which the recovery can be made. The relevant portion of judgment in case of ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.*** is reproduced 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (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.

6. In view of the above authoritative decision of the Supreme Court in the aforementioned case, this Court is of the opinion that the grievance of the Petitioner seems to fall squarely within the criteria and guidelines narrated in the Judgment of ***State of Punjab and others (Supra)***. The Petition thus deserves to be allowed.

7. Indisputably the wrong fixation if at all have been made at the behest of the Respondents. The Petitioners cannot be blamed for that in any manner. There is no allegation of mis-representation or fraud played by the Petitioners in receiving the excess payment which has been made. Under such circumstances all that the State can do is

rectification of the error that has occurred. The State does not have power to recover the amount which has already been paid to the employees on account of the fault of the officers of the State Government. Moreover, no order of recovery has also been passed against any of the Petitioners.

8. Thus, it is directed that the amount which has already been recovered by the Respondents shall be refunded back to the Petitioner forth with and in case any recovery is left the same shall also not be recovered any further.
9. With the aforesaid observation the Writ Petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE