

HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1283 of 2016**

Malko Ram S/o Bhaluram, aged about 34 years, Working as Peon, Boys Ashram, Pandrapath, Block & Tahsil Bagicha, District Jashpur, (Chhattisgarh)

---- **Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Scheduled Caste & Scheduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The Commissioner, Department of Scheduled Caste & Scheduled Tribe Development Chhattisgarh, Raipur, (Chhattisgarh)
3. The Collector, (Scheduled Tribe Welfare Branch), District Jashpur, (Chhattisgarh)
4. The Block Education officer, Bagicha, District Jashpur, (Chhattisgarh)

---- **Respondents**

Writ Petition (S) No. 1293 of 2016

Suraj Bali Ram S/o Haldhar Ram, aged about 40 years, Working as Peon, Govt. Pre Middle School Kamarima, Block & Tahsil Bagicha, District Jashpur, (Chhattisgarh)

---- **Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Scheduled Caste & Scheduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The Commissioner, Department of Scheduled Caste & Scheduled Tribe Development Chhattisgarh, Raipur, (Chhattisgarh)
3. The Collector, (Scheduled Tribe Welfare Branch), District Jashpur, (Chhattisgarh)
4. The Block Education officer, Bagicha, District Jashpur, (Chhattisgarh)

---- **Respondents**

Writ Petition (S) No. 1289 of 2016

Juthan Ram S/o Samaru Ram, aged about 42 years, Working as Peon, Govt. Middle School Sulesa, Block & Tahsiol Bagicha, District Jashpur, (Chhattisgarh)

---- **Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Scheduled Caste &

Scheduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)

2. The Commissioner, Department of Scheduled Caste & Scheduled Tribe Development Chhattisgarh, Raipur, (Chhattisgarh)
3. The Collector, (Scheduled Tribe Welfare Branch), District Jashpur, (Chhattisgarh)
4. The Block Education officer, Bagicha, District Jashpur, (Chhattisgarh)

---- Respondents

Writ Petition (S) No. 1287 of 2016

Ratnu Ram S/o Bhagwat Ram aged about 40 years, Working as Peon, Boys Ashram Chhichhli, Block & Tahsil Bagicha, District Jashpur, (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Scheduled Caste & Scheduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The Commissioner, Department of Scheduled Caste & Scheduled Tribe Development Chhattisgarh, Raipur, (Chhattisgarh)
3. The Collector, (Scheduled Tribe Welfare Branch), District Jashpur, (Chhattisgarh)
4. The Block Education officer, Bagicha, District Jashpur, (Chhattisgarh)

---- Respondents

Writ Petition (S) No. 1286 of 2016

Kinu Ram S/o Somra Ram, aged about 45 years, Working as Peon, Boys Hostel, Kodopara, Block & Tahsil Bagicha, District Jashpur (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Scheduled Caste & Scheduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The Commissioner, Department of Scheduled Caste & Scheduled Tribe Development Chhattisgarh, Raipur, (Chhattisgarh)
3. The Collector, (Scheduled Tribe Welfare Branch), District Jashpur, (Chhattisgarh)
4. The Block Education officer, Bagicha, District Jashpur, (Chhattisgarh)

---- Respondents

Writ Petition (S) No. 1295 of 2016

Deepchand Dwivedi S/o Ramnihar Dwivedi, aged about 45 years, Working as Peon, Govt. Primary School, Devdand, Block & Tahsil Bagicha, District Jashpur, (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh S/o through the Secretary, Scheduled Caste & Scheduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The Commissioner, Department of Scheduled Caste & Scheduled Tribe Development Chhattisgarh, Raipur, (Chhattisgarh)
3. The Collector, (Scheduled Tribe Welfare Branch), District Jashpur, (Chhattisgarh)
4. The Block Education officer, Bagicha, District Jashpur, (Chhattisgarh)

---- Respondents

Writ Petition (S) No. 1291 of 2016

Baldev Ram S/o Sahdev Ram, aged about 38 years, Working as Peon, Govt. Middle School Sardhapath, Block & Tahsil Bagicha, District Jashpur, (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Scheduled Caste & Scheduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The Commissioner, Department of Scheduled Caste & Scheduled Tribe Development Chhattisgarh, Raipur, (Chhattisgarh)
3. The Collector, (Scheduled Tribe Welfare Branch), District Jashpur, (Chhattisgarh)
4. The Block Education officer, Bagicha, District Jashpur, (Chhattisgarh)

---- Respondents

Writ Petition (S) No. 1288 of 2016

Bhutkul Ram S/o Khasru Ram, aged about 39 years, Working as Peon, Boys Ashram Bhadiya, Block & Tahsil Bagicha, District Jashpur (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Scheduled Caste & Scheduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The Commissioner, Department of Scheduled Caste & Scheduled Tribe Development Chhattisgarh, Raipur, (Chhattisgarh)

3. The Collector, (Scheduled Tribe Welfare Branch), District Jashpur, (Chhattisgarh)
4. The Block Education officer, Bagicha, District Jashpur, (Chhattisgarh)

---- Respondents

Writ Petition (S) No. 1294 of 2016

Anand Kunwar Xalxo S/o J.S. Xalxo, aged about 39 years, Working as Peon, Govt. Girls Ashram, Sanna, Block & Tahsil Bagicha, District Jashpur, (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Scheduled Caste & Scheduled Tribe Development Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The Commissioner, Department of Scheduled Caste & Scheduled Tribe Development Chhattisgarh, Raipur, (Chhattisgarh)
3. The Collector, (Scheduled Tribe Welfare Branch), District Jashpur, (Chhattisgarh)
4. The Block Education officer, Bagicha, District Jashpur, (Chhattisgarh)

---- Respondents

For Petitioners:	Shri Harish Khuntiya, Advocate.
For Respondents/State:	Shri S. P. Kale, Dy. A.G.

Hon'ble Shri P. Sam Koshy, J

Order On Board

23.02.2017

All these petitions have been filed assailing the impugned order Annexure P-1 passed by the respondents directing for recovery of certain excess payment made to the petitioners on account of fixation of pay scale from a wrong date.

2. Counsel for the petitioners submits that all the petitioners before this Court are Class IV employees working as Peon who had been initially appointed as daily wage worker. Subsequently, their services were regularized vide order dated 04.10.2008 and they were also granted pay scale of Rs.2550-55-2660-60-3200. However, subsequently, the impugned order of

recovery has been passed stating that the petitioners were not entitled for the pay scale which had been granted to them from the date it has been granted but only prospectively. Counsel for the petitioner submits that it is a case where the wrong pay scale has been granted to the petitioners on account of the inadvertence on the part of the officers of the State Govt. It is not a case where the wrong pay scale has been obtained by the petitioners by playing any misrepresentation or fraud and that if at all the any excess amount amount has been received by the petitioners, the same was on account of the inadvertence on the part of the respondents for which the petitioners now after a long period, cannot be penalized by issuing the order of recovery. He further submits that this issue is squarely covered by a decision of this Court in the case of *State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.* reported in 2015 AIR SCW 501.

3. State counsel, on perusal of the contents of the petitions as well as the documents supported with the petitions submits that the petitioners are covered by the decision of the Hon'ble Supreme Court in the case of *Rafiq Masih (supra)*.

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 in the judgment of *Rafiq Masih (supra)* 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. A perusal of the return filed by the respondents would also reveal that it is not the case of the State Government that the alleged wrong pay scale has been granted to the petitioners because of any misrepresentation or any fraud played by them. On the contrary, a perusal of the reply would give us an inference that it was an error on the part of the Officers of the respondents for having granted wrong pay scale to the petitioners without verifying the rules so far as the entitlement of the petitioners is concerned.

6. Thus, in view of the above given facts and also the decisions of the Supreme Court, the present petitions deserve to be and are accordingly allowed. The impugned order of recovery is set aside. It is ordered that the amount of recovery, if any recovered, shall be refunded to the petitioners within a period of three months from the date of receipt of copy of this order.

Sd/-

(P. Sam Koshy)
J U D G E