

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4106 of 2012**

1. Salikram Das S/o Lambodar Das Aged About 40 Years Govt. Model Hr. Secr. School Basna, Mahasamund, C.G.
2. Sadram Ajey S/o Punit Ram Aged About 41 Years Govt. Primary School Bhawarchua Basna, Mahasamund C.G.
3. Jailal Porte S/o Chamar Porte Aged About 38 Years Govt. M.School Bade Temri, Basna, Mahasamund C.G.

---- Petitioners**Versus**

1. State of Chhattisgarh Secretary Panchayat And Gramin Vikas Vibhag, DKS Bhawan Raipur C.G.
2. Director Panchayat and Social Welfare C.G. Raipur C.G., District : Raipur, Chhattisgarh.
3. Collector Mahasamund C.G., District : Mahasamund, Chhattisgarh.
4. Distt. Education Officer Mahasamund C.G., District : Mahasamund, Chhattisgarh
5. Block Education Officer Basna Mahasamund, C.G., District : Mahasamund, Chhattisgarh.
6. Zila Panchayat Mahasamund through Its C.E.O. Zila Panchayat, Mahasamund C.G., District : Mahasamund, Chhattisgarh
7. District Treasury Officer Mahasamund C.G., District : Mahasamund, Chhattisgarh.
8. Sub Divisional Officer (Revenue) Saraipali, Mahasamund C.G., District : Mahasamund, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Manoj Paranjpe, Advocate.
For State	:	Shri Ashutosh Pandey, Panel Lawyer.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****29/06/2018**

1. The challenge in the present writ petition is to the order dated 03.09.2012 whereby the respondents have ordered for recovery of excess payment which were paid to the petitioners inadvertently on account of wrong fixation of pay.
2. The writ petition was entertained as early as on 14.09.2012 and there

was a stay granted against the recovery notice which is still in operation.

3. The counsel for the petitioners submits that the wrong fixation has been made by the respondents long before the order of recovery have been issued. He further submits that the petitioners had not made any misrepresentation for getting the said erroneous fixation of pay.
4. The counsel for the petitioner further submits that the present case is squarely covered by the decision of the Supreme Court in case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334, wherein the Supreme Court has in categorical terms given certain situations under which recovery from an employee has been declared to be impermissible under the law. Some of the situations mentioned in the said judgment are 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.”

5. The State counsel opposes the petition and submits that the petitioners have been granted excess payment which otherwise they were not entitled for. Since the petitioners are in service, the respondents have ordered for recovery of excess payment which cannot be said to be bad in law, and therefore, prays for rejection of the petition.
6. If we consider the facts of the present case with the situations narrated by the Supreme Court in the preceding paragraph, it would reveal that, admittedly the petitioners are Class-III category employee. The wrong fixation was made about six years prior to the date of recovery. The undisputed fact also is that the said wrong fixation has not been made on account of any misrepresentation or any act on the part of the petitioners, but the same has occurred only on account of mistake committed by the respondents. The error whatsoever was at the hands of the office of the respondents.
7. Given the aforesaid factual matrix of the case, this court has no hesitation in holding that the order of recovery issued against the

petitioners is one which is impermissible under law as per the judgment of the Supreme Court in the case of Rafiq Masih (Supra) and as such the said impugned recovery notice is unsustainable. Accordingly, the impugned order dated 03.09.2012 deserves to be and is hereby set aside.

8. The petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder