

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 24-7-2018****Delivered on 25-7-2018****WPS No. 5312 of 2017**

1. Smt. Basanti Deshlahra W/o Lubhan Singh Aged About 48 Years Working As Assistant Teacher Panchayat At Govt. Primary School Bhirai, Block Gurur, District Balod, CG
2. Harishchandra Sinha S/o Mahruram Sinha Aged About 57 Years Working As Assistant Teacher Panchayat At Govt. Primary School Aamapani, Block Gurur, District Balod, CG
3. Smt. Seetadevi Kuldeep W/o Amarlal Kuldeep Aged About 42 Years Working As Assistant Teacher Panchayat At Govt. Primary School Sorar, Block Gurur, District Balod, CG

---- Petitioners**Versus**

1. State of Chhattisgarh Through Secretary, Department of Panchayat, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, CG
2. Chief Executive Officer, Janpad Panchayat Gurur, District Balod, CG
3. Block Education Officer, Block Gurur, District Balod, CG

---- Respondents**WPS No. 5337 of 2017**

1. Narayan Singh Sagar S/o Shri Ramji Sagar, Aged About 50 Years Working As Assistant Teacher Panchayat At Govt. Primary School Chandanbirahi Block Gurur, District Balod, CG
2. Anil Kumar Sahu S/o Khamhan Lal Sahu, Aged About 48 Years Working As Assistant Teacher Panchayat At Govt. Primary School Fagunda, Block Gurur, District Balod, CG
3. Chintaram Korram S/o Gainnuram Korram, Aged About 43 Years Working As Assistant Teacher Panchayat At Govt. Primary School Usarwara, Block Gurur, District Balod, CG
4. Sanjay Kumar Netam S/o Ramadhar Netam, Aged About 39 Years Working As Assistant Teacher Panchayat At Govt. Primary School Arjuni, Block Gurur, District Balod, CG
5. Vishnu Ram Suryavanshi S/o Shri Krishnaram Suryavanshi, Aged About 50 Years Working As Assistant Teacher Panchayat At Govt. Primary School Pond, Block Gurur, District Balod, CG
6. Manohar Thakur S/o Ram Chand Thakur, Aged About 42 Years Working As Assistant Teacher Panchayat At Govt. Primary School Kankalin, Block Gurur, District Balod, CG
7. Pardeshiram Sinha S/o Gain Singh Sinha, Aged About 52 Years Working As Assistant Teacher Panchayat At Govt. Girls Middle School Sorar, Block Gurur, District Balod, CG

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Panchayat, Mahanadi Bhawan, Mantralaya New Raipur, District Raipur, CG
2. Chief Executive Officer, Zila Panchayat Balod, District Balod, CG
3. Block Education Officer, Block Gurur, District Balod, CG

---- Respondents**WPS No. 5339 of 2017**

Smt. Neelam Sahu W/o Santosh Kumar Sahu Aged About 38 Years
Working As Assistant Teacher Panchayat At Government Primary
School Pikripur Block Gurur, District Balod CG

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Department Of Panchayat Mahanadi Bhawan Mantralaya New Raipur District Raipur CG
2. Chief Executive Officer, Janpad Panchayat Gurur, District Balod CG
3. Block Education Officer, Block Gurur District Balod CG

---- Respondents**WPS No. 6108 of 2017**

Smt. Usha Kamdi W/o Narottam Singh Kamdi, Aged About 48 Years
Working As Assistant Teacher Panchayat At Govt. Primary School
Surra, Block Gurur, District Balod CG

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Department of Panchayat, Mahanadi Bhawan, Mantralaya New Raipur, District Raipur CG
2. Chief Executive Officer, Zila Panchayat Balod, District Balod CG
3. Block Education Officer, Block Gurur, District Balod CG

---- Respondents

For petitioners
For R-1 and 3
For R-2

Mr. Ajay Shrivastava , Adv.
Mr. Dheeraj Wankhede, Govt. Adv.
Mr. K.P.S. Gandhi, Adv.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV Order**

1. As the identical point for consideration is involved, these writ petitions are being disposed off by this common order.
2. The petitioners preferred these writ petitions seeking relief that respondents should not recover – deduct any amount from their monthly salary and refund the recovered amount to them.
3. It is admitted by respondents that the petitioners are assistant teacher (panchayat) and posted in different schools of district Balod. They are

recovering the excess amount paid to the petitioners from their monthly salary from July 2017.

4. In brief, case of the petitioners is that recovery/deduction is being made from their salaries without passing any order. The action of the respondents is not sustainable in the eyes of law. They are class 3 employees and no recovery can be made from their salaries.
5. In brief, case of the respondents is that an objection was raised by the office of the Accountant General, Chhattisgarh regarding the pay fixation of the petitioners. After the verification, it was found that excess amount has been paid to the petitioners while extending the benefits of revised pay scale to them. Notices have been issued to the petitioners for seeking their consent for recovery of the excess payment made to them.
6. Counsel for the petitioners vehemently argued that recovery/deduction of the excess amount from the salaries of the petitioners is not justifiable because the competent authority has not passed any order of recovery / deduction from their salaries, they are the class 3 employees and as per law excess amount is not recoverable from them.
7. On the other hand, the Government Advocate for the respondents No. 1 and 3 argued that excess payments which were made in favour of the petitioners are legally recoverable. The petitioners had knowledge that excess payment had been made to them. They are wrongly benefited, thus the competent authority can recover the excess amount by deducting the same from their salaries.
8. Counsel for the petitioners placed reliance on the decision of Hon'ble Supreme Court in the matter of **State of Punjab and others -v- Rafiq Masih and others** [(2015) 4 SCC 334] paras 7 and 18 of which are relevant and quoted below :-

“7 Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be

iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, “for doing complete justice in any cause” would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.”

9. The Government Advocate appearing for the respondents No. 1 and 3 placed reliance on the decision of Hon'ble Supreme Court in the matter of **High Court of Punjab and Haryana and others -v- Jagdev Singh** [(2016) 14 SCC 267] in para 11, which is extracted below:

“ 11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

10. The counsel for the petitioners further placed reliance on a decision of this Court in the matter of **Vinod Sinha and others -v- State of Chhattisgarh and others** passed in WPS No. 3705/2017 and connected matters dated 22-11-2017, para 4 and 5 of which are relevant and quoted below :-

“4. While considering the five situations in which the Supreme Court has held the recovery to be impermissible in law, the Supreme Court in its latest decision in the matter of **Jagdev Singh** (supra) has dealt with the Proposition (ii) to observe thus in para-11:-

“ 11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

5. Thus in **Jagdev Singh** (Supra), the Proposition (i) in which all the petitioners in the present writ petitions would

be categorised or covered has neither been dealt with nor the proposition has been diluted. It would therefore necessary follow that **Jagdev Singh** (Supra) has in fact approved the Proposition (i) in the matter of **Rafiq Masih** (Supra).”

11. In the case in hand, respondents have not disputed that the petitioners are class 3 employees. Thus, this Court finds that indisputably petitioners are the class 3 employees.
12. In the case in hand no notice was given in the first instance that any excess payment is made would be recoverable. The petitioners have not furnished any undertaking while opting revised pay scale. Moreover, as per the judicial precedents laid down by this Court in **Vinod Sinha** (supra) and Hon'ble Supreme Court in **Jagdev Singh** (supra), the principle enunciated in proposition (ii) of the **Rafiq Masih** (supra) cannot apply where notices were given in the first instance to the petitioners that excess payment is made would be recoverable, they have furnished undertaking while opting for the revised pay scale. In other words, the aforesaid judicial precedent laid down in **Jagdev Singh** (supra) by the Hon'ble Supreme Court does not dilute the principles enunciated in propositions (i), (iii), (iv) and (v) in **Rafiq Masih** (supra).
13. In the case in hand, this is not the respondents' case that the petitioners were accessory in the process of granting excess amount, they have furnished factually incorrect information, they have committed fraud or they have misrepresented before the respondents.
14. The excess payment to the petitioners is the result of the sheer error or mistake on the part of the respondents for which the petitioners cannot be held liable to repay the excess amount. The petitioners cannot be saddled with the recovery of the excess amount paid to them.
15. Looking to the above mentioned facts and circumstances of the case this Court finds that respondents do not get any help from the aforesaid judicial precedent laid down in **Jagdev Singh** (supra).
16. Looking to the above mentioned facts and circumstances of the case, judicial precedents laid down in **Rafiq Masih** (supra) and **Jagdev Singh** (supra), this Court finds that the principle enunciated in proposition (i) in **Rafiq Masih** (supra) is applied to the

petitioners' case and the respondents cannot legally recover / deduct the excess amount paid to petitioners. Thus, such recovery / deduction is illegal. Hence, it is ordered that no recovery/ deduction shall be made from the petitioners' salary against the excess amount paid to them from today. The amount which has been already recovered/ deducted be refunded to the petitioners.

17. Thus, the instant writ petitions are allowed with the above directions.

**Sd/-
(Sharad Kumar Gupta)
Judge**