

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.5823 of 2014**

- Chintamani Ratde, S/o Late Shri Lakhan Lal Ratde Aged About 40 Years Asstt Grade III, Govt. Higher Secondary School, Reda, Block Dabhra, Distt Janjgir Champa, R/o Village Kharkena, Post Salhe, Via Chandrapur, Distt Janjgir Champa, Chhattisgarh

----- Petitioner**Versus**

- 1.State Of Chattisgarh Through The Secretary, Education Department, Mahanadi Bhawan, Mantralaya, New Raipur, Distt Raipur, Chhattisgarh
- 2.District Education Officer, Janjgir, Distt Janjgir Champa, Chhattisgarh

----- Respondents**WPS No.6154 of 2014**

- Devkumar Narsingh S/o Dularsay Narsingh Aged About 43 Years Asstt Grade III, Govt. Higher Secondary School Pendaruwa, Block Dabhra, Distt Janjgir Champa, R/o Village And Post Barapipar, Distt Janjgir Champa, Chhattisgarh

----- Petitioner**Versus**

- 1.State Of Chhattisgarh Through The Secretary, Education Department, Mahanadi Bhawan, Mantralaya, New Raipur, Distt Raipur, Chhattisgarh
- 2.District Education Officer, Janjgir, Distt Janjgir Champa, Chhattisgarh

----- Respondents

WPS No.6155 of 2014

- Ramratan Sidar, S/o Late Shri Sukhram Sidar, Aged About 39 Years, Assistant Grade III, Govt. Higher Secondary School Kirari Block Dabhra Distt. Janjgir Champa R/o Awas Plot Nagar Champa, Nagar Panchayat Dabhra Distt. Janjgir Champa, Chhattisgarh

----- Petitioner**Versus**

- 1.State Of Chhattisgarh Through The Secretary, Education Department, Mahanadi Bhawan, New Raipur, Chhattisgarh
- 2.District Education Officer, Janjgir, Distt. Janjgir - Champa, Chhattisgarh

----- Respondents**WPS No.6156 of 2014**

- Shivaji Yadav, S/o Late Kangresh Ram Yadav, Aged About 34 Years, Assistant Grade III, Govt. Higher Secondary School, Pendruwa, Block Dabhra, Distt Janjgir Champa, Chhattisgarh

----- Petitioner**Versus**

- 1.State Of Chhattisgarh Through Secretary, Education Department, Mahanadi Bhawan, Mantralaya, New Raipur, Distt Raipur, Chhattisgarh
- 2.District Education Officer, Janjgir, Distt Janjgir Champa, Chhattisgarh

----- Respondents

For Petitioners	Mr. S. K. Kushwaha, Advocate
For Respondent-State	Mr. Siddharth Dubey, Dy. GA

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

08/10/2021

1. Since common question of law and fact is involved in the present batch of writ petitions, they are being heard together and are being disposed of by a common order.
2. The petitioners in this batch of writ petitions are challenging the legality, validity and the correctness of the order dated 02.08.2014 (Annexure-P/3) passed by the respondent No.2, whereby the excess amount paid to the petitioners has been directed to be recovered.
3. Mr. S. K. Kushwaha, learned counsel for the petitioners, would submit that initially the petitioners were appointed on the post of Peon and thereafter they were promoted to the post of AG-III vide order (Annexure-P/2) passed by the respondent No.2 under the Chhattisgarh Public Service (Promotion) Rules, 2003, but subsequently vide order dated 02.08.2014 (Annexure-P/3) passed by the respondent No.2 itself, the order of promotion (Annexure-P/2)

has been cancelled/annulled and the recovery of excess amount already paid to the petitioners has been directed against the petitioners without giving any opportunity of hearing to the petitioners, which is in violation of principle of natural justice. He would further submit that no fraud or misrepresentation has been played by the petitioners and if the benefits have wrongly been granted to them, the same cannot be recovered and their case is covered by the law laid down by the Supreme Court in the matter of State of Punjab v. Rafiq Masih (White Washer) and Others¹. He would next submit that the similar issue has been considered and decided by this Court on 04.01.2016 in WPS No.4290/2013 in between Ram Krishna Sahu vs State of Chhattisgarh and others and other connected matters.

4. Mr. Dubey, learned State counsel, would support the impugned order.
5. I have heard learned counsel for the parties, considered their rival submissions made

1 (2015) 4 SCC 334

herein-above and went through the record with utmost circumspection.

6. True it is that the petitioners were promoted to the post of AG-III vide order (Annexure-P/2) passed by the respondent No.2 under the Chhattisgarh Public Service (Promotion) Rules, 2003 and subsequently vide order dated 02.08.2014 (Annexure-P/3) passed by the respondent No.2 itself, the order of promotion (Annexure-P/2) has been cancelled/annulled and the recovery of excess amount already paid to the petitioners has been directed against them, but the fact remains that while passing the order (Annexure-P/3), no opportunity of hearing has been afforded to the petitioners, which is in violation of principle of natural justice. Even otherwise, there is no allegation against the petitioners that they have played any fraud or committed any misrepresentation.

7. This Court in paras 7 to 10 of WPS No.4290/2013 has held as under:-

"7. In Rafiq Masih's case (supra),
Their Lordships of the Supreme Court

have considered the entire issue in a great detail and it has been held specifically that where payments have mistakenly been made by the employer, in excess of their entitlement, certain recoveries have been held to be impermissible in law. Para 18 of the report states 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 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 is 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."

8. In the above-stated judgment, Their Lordships of the Supreme Court have held that recovery from the employees belonging to Class-III and Class-IV services is impermissible in law where the payment has been made mistakenly by the employer in excess of entitlement.

9. The fact remains in the present cases that earlier petitioners filed writ petition which was allowed in terms of order in the matter of Ram Kumar Sahu (supra). Thereafter, State Government granted benefit of regular pay scale to the petitioners and it is not the case that the petitioners have played any fraud or made any misrepresentation in order to get payment of higher pay scale. The petitioners are Class-III employees and their case is covered by the decision rendered by the Supreme Court in the matter of Rafiq Masih (supra).

10. In view of the above, writ petitions are allowed and the order dated 18/09/2013 (Annexure P/2) relating to the present petitioners shall stand quashed. No order as to cost(s)."

8. In view of the above, all the writ petitions are allowed and the impugned order dated 02.08.2014 (Annexure-P/3) in all the writ petitions, so far as it relates to the present petitioners, is hereby quashed. However, the

respondents are at liberty to proceed in
accordance with law. No order as to cost (s).

Sd/-
Sanjay K. Agrawal
Judge

Nirala