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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 624 of 2020**

1. Union of India, Through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore – 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.)

---- Petitioners**Versus**

Inuganti Venkata Narasimha Murthy, S/o Late Sri I. Raja Rao, Aged about 54 years, R/o D.No. 23-19-54, Srinivas Apartment, Flat No. S/1 Lalithanagar, Haripuram Tehsil Rajahmundry, Police Station Rajahmundry, District East Godavari (A.P.)

---- Respondent**with****Writ Petition (S) No. 701 of 2020**

1. Union of India, Through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore – 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.)

---- Petitioners**Versus**

Manoj Kumar Senapati, S/o Kate Pitamber Senapati, Aged about 60 years, R/o Post - Dehurda, Behind Electric Office, Tehsil and Police Station Bhograi, District Balasore, Odisha.

---- Respondent**with****Writ Petition (S) No. 703 of 2020**

1. Union of India, Through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.

2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore – 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.)

---- Petitioners

Versus

Rachakona Gnaneshwar, S/o Late R. Venkaiah, Aged about 56 years, Resident of Plot No. 179, Christian Colony, Hastinapuram South, District- Hyderabad, Telangana.

---- Respondent

with

Writ Petition (S) No. 705 of 2020

1. Union of India, Through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore – 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.)

---- Petitioners

Versus

Ramesh Chanddra Prusty, S/o Late Shri Bhabagrahi Prusty, Aged about 56 years, R/o Basic Seed Multiplication and Training Centre (BSMTC), Central Silk Board, Government of India, Kashipur, Near Petrol Pump, Police Station Keonjhar, District- Keonjhar (Odisha).

---- Respondent

with

Writ Petition (S) No. 706 of 2020

1. Union of India, Through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore – 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.)

---- Petitioners

Versus

Milap Ram Chandra, S/o Late Shri Mayaram, Aged about 56 years, R/o Ruchika Vihar, Ward No. 14, Sirgitti, District - Bilaspur (C.G.)

---- Respondent

with

Writ Petition (S) No. 719 of 2020

1. Union of India, Through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore – 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.)

---- Petitioners

Versus

Prabhat Ranjan Dutta, S/o Late Shri Nalini Mohan Dutt, Aged about 54 years, R/o Village - Samina, Post Kopisingha, District Sundargarh (Odisha)

---- Respondent

with

Writ Petition (S) No. 736 of 2020

1. Union of India, Through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore – 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.)

---- Petitioners

Versus

Naresh Chanddra Nayak, S/o Bharathi Nayak, Aged about 55 years, Resident of MTPL Junction, Chamaria Guda, Tehsil and District - Nawrangpur - 674059 Odisha

---- Respondent

with

Writ Petition (S) No. 749 of 2020

1. Union of India, Through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore – 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.)Bharni, District Bilaspur, Chhattisgarh

---- Petitioners

Versus

Pradeep Kumar Khosla, S/o Santisilo Khosla, Aged about 57 years, R/o Christian Street, Tahsil and Police Station Jeypore, District Jeypore (Odisha)

---- Respondent

with

Writ Petition (S) No. 796 of 2020

1. Union Of India Through The Secretary, Ministry Of Textiles, Udyog Bhawan, New Delhi., District : New Delhi, Delhi
2. Central Silk Board Through The Member Secretary, Csb Complex, B.T.M. Layout, Madivala, Bangalore - 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation Central Silk Board, Through The Director (Ministry Of Textiles, Government Of India), Pendari Via Post Office Bharni, District Bilaspur Chhattisgarh.

---- Petitioners

Versus

Arup Kumar Goswami, S/o Sisir Kumar Goswami, Aged about 60 years, R/o Kundu Bungalow, Beside Electric Office, Tehsil and Police Station Madhupur, District Deoghar (Jharkhand).

---- Respondent

with

Writ Petition (S) No. 801 of 2020

1. Union of India, Through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore – 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through

the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.) Bharni District Bilaspur Chhattisgarh

---- Petitioners

Versus

K. S. Chatterjee, S/o Late Shri S. P. Chatterjee, Aged about 56 years, R/o Bainkunthpur, Ward No. 16, Near Jagannath Mandir, Tehsil And Police Station Raigarh District Raigarh (C.G.)

---- Respondent

with

Writ Petition (S) No. 808 of 2020

1. Union of India, Through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore – 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.)

---- Petitioners

Versus

A. K. Das, S/o Late Shri N. Ch. Das, Aged about 57 years, R/o MIG 2/11 Housing Board Colony Dharampur, Jagdalpu, Tehsil Jagdalpu, District Bastar (C.G.)

---- Respondent

with

Writ Petition (S) No. 817 of 2020

1. Union of India, Through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore – 560068, Karnataka.
3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.)

---- Petitioners

Versus

Fakir Hansdah, S/o Late Kanhoo Ram Hansdah, Aged about 58 years, R/o 25-E Gaitadih Bank Colony, Gaitahdih, Post Karandih, Jamshedpur,

Tehsil - Jamshedpur, Police Station - Sundarnagar, District - East Singhbhum, Jharkhand

---- Respondent

(Cause-title taken from Case Information System)

For Petitioners	:	Mr. Ramakant Mishra, Assistant Solicitor General.
For Respondent	:	Mr. Amrito Das, Advocate.

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Justice N.K. Chandravanshi, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

13.12.2021

These batch of writ petitions, numbering 12, have been filed challenging the common order dated 20.09.2019 passed by the learned Central Administrative Tribunal, Jabalpur Bench, Circuit sitting at Bilaspur (for short, 'Tribunal') in Original Application Nos. 203/00886/2018, 203/00887/2018, 203/00888/2018, 203/00889/2018, 203/00890/2018, 203/00891/2018, 203/00892/2018, 203/00893/2018, 203/00894/2018, 203/00895/2018, 203/00896/2018, 203/00897/2018.

2. Heard Mr. Ramakant Mishra, learned Assistant Solicitor General appearing for the petitioners alongwith Mr. B. Gopa Kumar, learned counsel who has also addressed the Court on behalf of petitioner No. 2, *i.e.*, Central Silk Board. Also heard Mr. Amrito Das, learned counsel appearing for the respondents in these batch of writ petitions.

3. Challenge in the Original Applications were to identical orders of recovery passed by the petitioners in the years in 2016 and 2018 on account of wrong fixation of pay in between 2001 and 2005.

4. As the facts involved and the relief sought are identical and as the learned Tribunal had also disposed of all the original applications by a common order, these batch of writ petitions are being disposed of by this common order.
5. For the purpose of disposal of the aforesaid original applications, the learned Tribunal had referred to the Original Application No. 203/00886/2018. For the purpose of continuity, we will also refer, wherever necessary, to the aforesaid original application, which has resulted in filing of Writ Petition (S) No. 706 of 2021.
6. Writ Petition (S) No. 706 of 2021 was not listed in the list today. Learned counsel for the parties submitted that the aforesaid writ petition may be directed to be listed in the supplementary list today itself so that all these matters can be heard and accordingly, Writ Petition (S) No. 706 of 2021 is listed in the supplementary list and thereafter, all these matters are taken up for consideration.
7. The applicant in Original Application No. 203/00886/2018 was working as Upper Division Clerk in the pay-scale of Rs. 4000-100-6000. He was granted higher pay-scale of Rs. 5000-8000 with effect from 03.08.2003 vide order dated 04.08.2003 on the ground that his junior was granted financial upgradation under the 'Assured Career Progression Scheme' (for short, 'ACP'). On an Audit objection being raised by the Internal Audit Wing of Ministry of Textiles and AG Audit to the effect that the upgradation of pay of the applicant was not in conformity with the instructions contained in Office Memorandum No. 35034/1/97-Estt(D) dated 09.08.1999, issued by Department of Personal Training (DoPT), directions were issued by the Ministry of Textiles for withdrawing higher pay-scale granted to the applicant as also to refix pay as per his entitlement and also to recover excess payment made.

8. It is on the basis of above directions, the petitioner No. 2 passed an order dated 16.05.2016.

9. The learned Tribunal, relying upon the decision of the Hon'ble Supreme Court in the case of ***State of Punjab & Others vs. Rafiq Masih (White washer)***, reported in ***(2015) 4 SCC 334***, held that since the applicants were enjoying the benefit for more than 5 years and since most of the applicants are on the verge of their retirement, what was granted to them cannot be taken away by way of recovery.

10. The operative portion of the order of the learned Tribunal reads as follows:

“13. Accordingly, all these Original Applications are disposed of with a direction that there can be a future modification of pay scale and the pension. But what has been granted to the applicants already cannot be taken away from them and cannot be recovered at all. Any amount recovered be refunded to the applicants within 90(ninety) days from the date of receipt of a copy of this order. No order as to cost.”

11. Mr. Ramakant Mishra as well as Mr. B. Gopa Kumar submit that the reliance placed on ***Rafiq Masih*** (supra) is not applicable in the facts of the case and in that context, they place reliance on the decision of the Hon'ble Supreme Court in ***Chandi Prasad Uniyal & Others vs. State of Uttarakhand & Others***, reported in ***(2012) 8 SCC 417***.

12. *Per contra*, Mr. Das has supported the impugned judgment and he has also placed reliance on the judgment of the High Court of Karnataka in the case of ***Member Secretary, Central Silk Board & Others vs. Shri M.K. Srinivas & Others (Writ Petition No. 3422 of 2021 (S-CAT), decided on 16.03.2021)***. It is

submitted that the aforesaid judgment is squarely applicable in the facts of the present batch of writ petitions.

13. On a query of the Court, Mr. B. Gopa Kumar submits that the facts before the Karnataka High Court in the aforesaid case and the facts in this batch of writ petitions are similar.

14. It is not in dispute that the post of Upper Division Clerk is a Group-C post.

15. In *Chandi Prasad Uniyal* (supra), the Hon'ble Supreme Court observed that it has not laid down as a principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to such irregular / wrong fixation of pay can be recovered. The Hon'ble Supreme Court further observed that any amount received by the recipient without the authority of law can always be recovered barring a few exceptions of extreme hardships but not as a matter of right and taking note of the facts of the case, as presented, it was held that the case of the appellants therein did not fall in any of the exceptional categories and that apart, there was a stipulation in the fixation order that in case of irregular / wrong pay fixation, the institution in which the appellant were working would be responsible for recovery of the amount received in excess from the salary / pension.

16. In *Rafiq Masih* (supra) at paragraphs 6 and 7, the Hon'ble Supreme Court observed as follows :

“6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be

compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

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 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."

17. It was further held in *Rafiq Masih* (supra) that an action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. It is also held that recovery from employees in lower rung of service, would result in extreme hardship to them as it is considered that the employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer.

18. After a detailed analysis of the case law on the subject, the Hon'ble Supreme Court in *Rafiq Masih* (supra) at paragraph 18 observed as follows :

“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.”

19. In ***M.K.Srinivas*** (supra), the Karnataka High Court had held that the learned Tribunal was justified in holding that there can be no recovery of payments already made to the respondents therein as parameters at (i), (ii), (iii) and (v) of ***Rafiq Masih*** (supra) would apply.

20. A perusal of the materials on record would go to show that, in any view of the matter, clauses (ii) and (iii) of the ***Rafiq Masih*** (supra) would be applicable in the facts of these cases. Though the applicants were subsequently promoted to the Group-B posts in the year 2016, it is an admitted position that when the benefits were granted to them, they were holding Group-C post and they continued to receive excess pay for more than 5 years.

21. In view of the above discussion, we see no good reason to interfere with the order of the learned Tribunal and accordingly, the writ petitions are dismissed. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(N.K. Chandravanshi)
Judge