

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.191 of 2014**

- Yogeshwarpuri Goswami, S/o Shri B. P. Goswami, Aged About 57 Years, Head Master, Govt. Middle School, Damouwapara, Post, Thana, Tahsil Rajim, Distt. Gariyaband, Chhattisgarh

----- Petitioner**Versus**

- 1.State Of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, New Raipur, Chhattisgarh
- 2.District Education Officer, Gariyaband, Distt. Gariyaband, Chhattisgarh
- 3.Block Education Officer, Block Fingeshwar, Distt. Gariyaband, Chhattisgarh

----- Respondents**WPS No.193 of 2014**

- Johat Ram Verma, S/o Shri Sonsay Verma, Aged About 58 Years, Head Master, Govt. Middle School, Beltukari, Post Sursabandha, Thana, Tahsil Rajim, Distt. Gariyaband, Chhattisgarh

----- Petitioner**Versus**

- 1.State Of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, New Raipur, Distt. Raipur, Chhattisgarh
- 2.District Education Officer, Gariyaband, Distt. Gariyaband, Chhattisgarh
- 3.Block Education Officer, Block Fingeshwar, Distt. Gariyaband, Chhattisgarh

----- Respondents

WPS No.194 of 2014

- Lav Kush Sharma, S/o Shri Lakhan Lal Sharma, Aged About 55 Years, Head Master, Govt. Middle School, Pokhara, Post, Thana and Tahsil Rajim, Distt. Gariyaband, Chhattisgarh

----- Petitioner

Versus

- 1.State Of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, New Raipur, Chhattisgarh
- 2.District Education Officer, Gariyaband, Distt. Gariyaband, Chhattisgarh
- 3.Block Education Officer, Block Fingeshwar, Distt. Gariyaband, Chhattisgarh

----- Respondents

WPS No.207 of 2014

- Ghasi Ram Dewangan, S/o Late Shri Ratanu Ram Dewangan, Aged About 61 Years, Head Master, Govt. Middle School, Patharra, Post Thana and Tahsil Rajim, Distt. Gariyaband, Chhattisgarh

----- Petitioner

Versus

- 1.State Of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, New Raipur, Chhattisgarh
- 2.District Education Officer, Gariyaband, Distt. Gariyaband, Chhattisgarh
- 3.Block Education Officer, Block Fingeshwar, Distt. Gariyabandh, Chhattisgarh

----- Respondents

For Petitioners	Mr. Somkant Verma, Advocate
For Respondent-State	Mr. Sunil Otwani, Addl. AG

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

22/09/2021

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 18.09.2013 (Annexure-P/1) passed by the respondent No.3, whereby the excess amount paid to the petitioners has been directed to be recovered in 10 similar installments.
3. Mr. Somkant Verma, learned counsel for the petitioners, would 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 from them and no opportunity of

hearing has been afforded to the petitioners. He would further submit that the petitioners are the Class-III employees and presently they have retired from the service 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. Learned State counsel would support the impugned order and submit that **Rafiq Masih** (supra) would not be applicable in the present case, as the petitioners are the Head Masters and the Class-III employees. He would also submit that the petitioners had already given the undertaking to refund the excess amount, if any, therefore, the writ petitions deserve to be dismissed.

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. It is not in dispute that the petitioners at the relevant point of time were working as Head Master in the concerned schools. It is also not in dispute that vide order/circular dated 05.01.2011 (Annexure-P/3) issued by the State Government, the petitioners were granted regular pay scale from the date of their initial appointment and vide impugned order (Annexure-P/1), the recovery of excess amount paid to the petitioners has been directed against them citing reason that the order (Annexure-P/3), whereby the petitioners were granted regular pay scale, has been cancelled, but there is no allegation against the petitioners that they have played any fraud or committed any misrepresentation in order to get the payment of higher pay scale, which had already been granted to the petitioners by the State Government, and straightway the impugned order (Annexure-P/1) has been passed without affording any opportunity of hearing to the petitioners, which is in violation of

principles of natural justice.

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 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."

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 in part and the impugned order dated 18.09.2013 (Annexure-P/1) 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