2025:CGHC:42807

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1356 of 2023

Gopal Prasad Naik S/o Girdhari Lal Naik, Aged About 56 Years R/o Indraprasth Colony Janjgir, District : Janjgir-Champa, Chhattisgarh

... Petitioner

versus

1 - State of Chhattisgarh Through Its Secretary, Technical Education Department, Mantralaya Indrawati Bhawan, Naya Raipur, Raipur, Chhattisgarh.

2 - Director, Technical Education Department Mantralay Indrawati Bhawan, Naya Raipur, Raipur Chhattisgarh.

... Respondents

(Cause-title taken from Case Information System)

For Petitioner	:	Ms. Diksha Gouraha, Advocate
For Respondents-State	:	Mr. Ankur Kashyap, Dy. Govt. Advocate

Hon'ble Shri Amitendra Kishore Prasad, Judge
Order on Board

22.08.2025

1 The instant writ petition is preferred by the petitioner with the following relief(s):-

"10.1 That, the Hon'ble Court may kindly be pleased to quash the Impugned Order Dated

21.12.2022 (P/1) issued by the Director, Technical Education, Naya Raipur, Chhattisgarh;

10.2 That, the Hon'ble Court may kindly be pleased to quash the Impugned Letter dated 30/01/2023 (P/2) sent to the petitioner by the Director, Technical Education, Naya Raipur, Chhattisgarh.

10.3 That, any other relief(s) which the Hon'ble Court deems fit & proper may kindly be pleased to granted in favour of the petitioner;"

2 Brief facts of the case, are that the petitioner was initially appointed as Lecturer in 1996 and was subsequently promoted to the post of Principal in Government Polytechnic College, Janjgir-Champa, where he has been discharging his duties sincerely. Vide order dated 21.12.2022, the Director, Technical Education, Naya Raipur, passed the impugned order directing recovery of alleged excess payment made to the petitioner from the year 2006 onwards, along with modification of pay fixation. Vide order dated 28.02.2013, the petitioner's pay was revised under the Career Advancement Scheme as per the recommendations of the competent authority, and similarly, vide order dated 23.02.2017, the petitioner was promoted to the post of HOD (Chemical Engineering) with revised pay fixation. Both these orders were passed by the respondent authorities themselves without any stipulation of excess payment or liability of recovery. On the basis

of such fixation, he has also taken substantial education and housing loans, and recovery at this stage would cause grave financial hardship and irreparable loss. A representation dated 22.12.2022 was submitted to the Director, Technical Education, requesting reconsideration of the recovery, but the same has not been addressed. Any error in fixation is attributable solely to the respondents, and recovery after 16 years is arbitrary, malafide, and unsustainable in law. Having no other efficacious remedy, the petitioner has approached this Court by way of the present petition.

3 Learned counsel for the petitioner would submit that the petitioner was initially appointed as Lecturer in the year 1996 and was later promoted to the post of Principal in the Government Polytechnic College, Janjgir-Champa, where he has been serving with utmost sincerity. To the utter shock of the petitioner, the Director, Technical Education, Naya Raipur, passed the impugned order dated 21.12.2022 directing recovery of alleged excess payment said to have been made since the year 2006, along with modification in the pay fixation. It is contended that the petitioner had no role whatsoever in fixation of his pay. The fixation was made by the competent authorities from time to time in accordance with the prevailing rules. Vide order dated 28.02.2013, the pay scale of the petitioner was revised under the Career Advancement Scheme on the recommendation of the Committee, and similarly, vide order dated 23.02.2017, the petitioner was promoted to the post of HOD

(Chemical Engineering) with revised pay fixation. Both these orders were passed by the respondent authorities themselves and at no point was it mentioned that the fixation was provisional or liable for recovery in case of any excess payment. Learned counsel would further submit that the petitioner has taken an education loan of Rs.7,50,000/- and a home loan of Rs.74,00,000/-, and is already paying monthly EMIs of Rs.89,373/-. If recovery is now effected after 16 years, it would cause grave financial hardship and irreparable loss to the petitioner.

4 Learned counsel for the petitioner urged that any error in fixation, if at all, is solely attributable to the respondent authorities and not to the petitioner. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in ***State of Punjab and others v. Rafiq Masih, (2015) AIR SCW 501***, wherein it has been categorically held that recovery of excess payment is impermissible in certain categories, including where excess payment has been made for a period exceeding five years, and where such recovery would be harsh, arbitrary, and inequitable. The case of the petitioner squarely falls within clause (iii) and clause (v) of the said judgment.

5 It is also submitted that this Court, in ***Bare Lal Uike v. State of Chhattisgarh & others, WPS No.6009 of 2018***, following the law laid down in ***Rafiq Masih*** (supra), has quashed similar recovery

orders, holding that when the employee is not responsible for erroneous fixation or excess payment, recovery cannot be made.

6 Learned counsel would submit that the impugned order is wholly arbitrary, malafide, and unsustainable in law, as it seeks to saddle the petitioner with recovery for a period of 16 years without any fault on his part. It is, therefore, prayed that the impugned order dated 21.12.2022 be quashed, and the respondents be restrained from effecting any recovery from the petitioner.

7 Reliance has been placed upon the judgments of the Hon'ble Supreme Court in ***Thomas Daniel v. State of Kerala and others, 2022 SCC OnLine SC 536***, and ***Jogeswar Sahoo and others v. District Judge, Cuttack and others, 2025 SCC OnLine SC 724***, wherein it has been held that when excess payment is made to an employee on account of an employer's erroneous interpretation of rules, and not on account of any fraud, misrepresentation, or suppression of facts by the employee, recovery of such excess payment is impermissible. The Hon'ble Supreme Court has further observed that any such recovery, more particularly after retirement and without affording an opportunity of hearing, would be inequitable, arbitrary, and unsustainable in law.

8 Further reliance has been placed on the decisions of this Court in ***Shankar Narayan Chakrawarty v. State of Chhattisgarh and others, WPS No.9716/2019, decided on 30.01.2020***, and ***N.N. Dwivedi v. State of Chhattisgarh and others, WPS***

No.6218/2023 and analogous cases, decided on 26.11.2024. In the aforesaid cases, this Court has held that in the absence of any statutory rule, an undertaking furnished by the employee cannot be treated as binding in order to justify recovery of alleged excess payments.

9 Per contra, learned State counsel opposes the submissions made on behalf of the petitioner and submits that the impugned order dated 21.12.2022 has rightly been passed by the competent authority after due scrutiny of the service records of the petitioner. It is urged that the petitioner had been drawing salary in excess of his entitlement on account of erroneous fixation of pay, which was later detected during audit and verification. Once such irregularity came to the notice of the authorities, it became incumbent upon them to rectify the pay fixation and recover the excess amount, in order to prevent undue loss to the public exchequer. He further submits that the principle of “no one should be unjustly enriched at the cost of the State” squarely applies in the present case. The petitioner has enjoyed financial benefits for more than 16 years and, therefore, cannot now turn around and contend that the State is estopped from recovering the excess payments. It is further contended that furnishing of undertakings at the time of fixation and acceptance of benefits thereunder binds the petitioner to abide by any subsequent correction made by the authorities. He also contends that the judgments relied upon by the petitioner are distinguishable on facts inasmuch as in those cases recovery was

sought either after retirement or without affording any hearing, whereas in the present case the petitioner is still in service and ample opportunity has been granted to him by way of representation. It is further submitted that the doctrine of unjust enrichment, as well as the obligation of the Government to safeguard public funds, outweighs the plea of hardship raised by the petitioner. Accordingly, no interference is called for in the impugned order.

10 I have heard learned counsel appearing for the parties and perused the documents annexed with the writ petition.

11 Very recently, in the matter of ***Jogeswar Sahoo*** (supra), the Hon'ble Supreme Court has observed as follows :-

> *"8. The law in this regard has been settled by this Court in catena of judgments rendered time and again; Sahib Ram vs. State of Haryana, (1995) Supp (1) SCC 18, Shyam Babu Verma vs. Union of India, (1994) 2 SCC 521, Union of India vs. M. Bhaskar, (1996) 4 SCC 416 and V. Gangaram vs. Regional Jt. Director, (1997) 6 SCC 139 and in a recent decision in the matter of Thomas Daniel vs. State of Kerala & Ors., (2022) SCC OnLine SC 536.*
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> *9. This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if such excess*

payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, such excess payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered.

10. In ***Thomas Daniel*** *(supra), this Court has held thus in paras 10, 11, 12 and 13:*

> *"10. In Sahib Ram v. State of Haryana, this Court restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority concerned, without any misrepresentation on part of the employees. It was held thus:*
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> > *"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any*

misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

11. In Col. B.J. Akkara (Retd.) v. Government of India, this Court considered an identical question as under:

"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC

521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any

subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards

pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made."

12. In Syed Abdul Qadir v. State of Bihar, excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has

been made by applying a wrong interpretation/understanding of a Rule or Order. It was held thus:

> *"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been*

paid in excess to the appellant teachers should be made."

13. In State of Punjab v. Rafiq Masih (White Washer) wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:

"8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding

right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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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."

11. In the case at hand, the appellants were working on the post of Stenographers when the subject illegal payment was made to them. It is not reflected in the record that such payment was made to the appellants on account of any fraud or misrepresentation by them. It seems, when the financial benefit was extended to the appellants by the District Judge, Cuttack, the same was subsequently not approved by the High Court which resulted in the subsequent order of recovery. It is also not in dispute that the payment was made in the year 2017 whereas the recovery was directed in the year 2023. However, in the meanwhile, the appellants have retired in the year 2020. It is also an admitted position that the appellants were not afforded any opportunity of hearing before issuing the order of recovery. The appellants having

> *superannuated on a ministerial post of Stenographer were admittedly not holding any gazetted post as such applying the principle enunciated by this Court in the above quoted judgment, the recovery is found unsustainable."*

12 Reverting to the facts of the case, this Court is of the view that the controversy involved in the present case is no longer res integra. The Hon'ble Supreme Court in ***Rafiq Masih*** (supra) has categorically held that recoveries of alleged excess payment cannot be made in cases where such payment was not occasioned by any misrepresentation, fraud or suppression on the part of the employee, but was solely on account of an error committed by the employer while fixing the pay. The principle has been reiterated in ***Thomas Daniel*** (supra) and ***Jogeswar Sahoo*** (supra), wherein it has been emphasised that recovery after a long lapse of time, particularly when the employee has arranged his financial affairs on the basis of the pay fixed by the competent authority, is inequitable, arbitrary and unsustainable in law.

13 In the present case, it is not in dispute that the petitioner was appointed in 1996, thereafter promoted as Principal, and his pay fixation from time to time was carried out by the competent authorities themselves through express orders. At no stage was it indicated to him that such fixation was erroneous or that he may be liable to refund any alleged excess payment. For more than sixteen years, the petitioner has been drawing salary in terms of

such fixation. There is also nothing on record to even remotely suggest that the petitioner had played any role in misleading the authorities, or that he was guilty of fraud, misrepresentation, or suppression of material facts. In these circumstances, fastening liability upon the petitioner at this belated stage would be wholly unjust and contrary to the principles of fairness, equity and good conscience as recognised in the aforesaid binding precedents.

14 Moreover, the recovery directed against the petitioner not only overlooks the settled legal position but also causes disproportionate hardship. It is undisputed that the petitioner has already availed housing and education loans and is under heavy financial obligation. Ordering recovery of alleged excess payments spanning sixteen years would result in grave prejudice and irreparable financial loss, which the law does not permit in absence of any fault on the part of the employee.

15 For the aforesaid reasons, this Court is of the firm opinion that the impugned order dated 21.12.2022 passed by the Director, Technical Education, Naya Raipur C.G. vide Annexure P/1, directing recovery of the alleged excess payment, cannot be sustained in law and deserves to be set aside.

16 Accordingly, the writ petition is **allowed**. The impugned order dated 21.12.2022 is hereby quashed. The respondents are restrained from effecting any recovery from the petitioner on account of alleged excess payment. However, the respondents

shall be at liberty to undertake the process of revising/rectifying the pay fixation of the petitioner prospectively, strictly in accordance with law and after affording him due opportunity of hearing.

17 It is made clear that if any recovery has already been made from the petitioner pursuant to the impugned order, the same shall be refunded to him within a period of three months from the date of production of certified copy of this order. There shall be no order as to costs.

Sd/-

(Amitendra Kishore Prasad)
Judge

Yogesh

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Head Note

Recovery of excess payment from employee — Impermissible where excess payment is not on account of misrepresentation, fraud, or fault of the employee but due to mistake of the employer. Employee cannot be penalised for the fault committed by the employer.