CGHC010422752026 2026:CGHC:45731

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 7746 of 2026

Umesh Pathak S/o Late K.G. Pathak, Aged About 68 Years R/o Professor Colony, Parshuram Nagar, H.No. 1932/65, Civil And Revenue District Raipur (C.G.)

... Petitioner

versus

1 - State of Chhattisgarh Through The Secretary, Department of Higher Education Mantralaya, Mahanadi Bhawan, Naya Raipur, Atal Nagar, District Raipur (C.G.)
2 - The Joint Director, Directorate of Higher Education, Indravati Bhawan, Naya Raipur, Atal Nagar, District Raipur (C.G.)
3 - The Commissioner Directorate Of Higher Education, Block-3, 2nd And 3rd Floor, Indravati Bhawan, Naya Raipur, Atal Nagar, District Raipur (C.G.)
4 - The Divisional Joint Director Treasury, Accounts And Pension, Raipur Division District Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. Aishwary Diwan, Advocate
For State/Respondent	:	Mr. Anadi Sharma, PL

(Hon'ble Shri Justice Bibhu Datta Guru)

Order on Board

29/10/2026

1. The petitioner has filed the present writ petition challenging the recovery of ₹1,56,865/- on account of alleged excess payment arising out of erroneous fixation of his pay.

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2. Case of the petitioner is that the petitioner was appointed as Assistant Grade-III in the Higher Education Department on 31.08.1987 and was subsequently promoted to the post of Accountant Grade-II on 10.01.2008 and Accountant Grade-I on 10.09.2018. He superannuated from service on 31.08.2019. Thereafter, objections were raised by the respondents regarding his pay fixation and grant of increments, and by order dated 13.07.2020, recovery of an amount of ₹1,56,865/- was ordered from his retiral dues. Aggrieved by the said recovery order, the petitioner filed W.P.(S) No. 3439/2020 before this Court. By order dated 16.03.2026, this Court set aside the recovery order dated 13.07.2020, as the same had been passed without affording an opportunity of hearing to the petitioner. The respondents were directed to reconsider the matter afresh after issuing notice and providing an opportunity of hearing to the petitioner, in accordance with law, and to pass a reasoned and speaking order within three months. The respondents were also directed to consider the question of grant of regular monthly pension to the petitioner. Thereafter, the petitioner submitted representations dated 22.04.2026 and 12.06.2026 before the respondents, who after considering the same passed an order dated 11.6.2026 observing that the recovery proceedings are just and proper. The said order has been communicated to the petitioner on 16.6.2026. Thus, this petition.

3. Learned counsel for the petitioner submits that, despite the earlier recovery order dated 13.07.2020 having been set aside by this Court vide order dated 16.03.2026 passed in W.P.(S) No. 3439/2020, the respondents could not have issued a fresh recovery order dated

16.06.2026 for the same amount. It is further contended that the petitioner has retired from service and, therefore, the recovery is impermissible in view of the law laid down by the Hon'ble Supreme Court in ***State of Punjab v. Rafiq Masih (White Washer), (2015) 4 SCC 334***. On these grounds, the petitioner has filed the present writ petition challenging the fresh recovery order and seeking appropriate relief.

4. *Per contra*, learned State counsel submits that the earlier recovery order was set aside with a direction to the competent authority to reconsider the matter afresh after affording an opportunity of hearing to the petitioner and to pass a reasoned order in accordance with law. It is contended that the earlier order did not prohibit fresh recovery proceedings and that the impugned order dated 16.06.2026 was passed upon reconsideration of the matter pursuant to the directions of this Court. He further submits that the amount in question was paid in excess of the petitioner's lawful entitlement on account of erroneous pay fixation and that the petitioner cannot claim an absolute right to retain such amount merely because the earlier recovery order was set aside.

5. Heard learned counsel for the parties and perused the material available on record.

6. In respect of the recovery order dated 13.7.2020 the petitioner approached this Court in WPS No.3439 of 2020. He also preferred WPS No.3362 of 2020 with regard to non payment of pension and retiral dues. Both the petitions were decided by the common order dated 16.3.2026 and has passed the following order:

> 6. In the case at hand, a careful perusal of the record would show that impugned order of recovery dt. 13.07.2020 has been passed without affording any opportunity of hearing to the petitioner and after retirement of the petitioner on 31.08.2019 he has not been paid pension and retiral dues till date and the matter involves civil consequences, therefore, the impugned order of recovery dated 13.07.2020 is hereby set aside. The respondent No.02, i.e., Joint Director, Directorate of Higher Education, Raipur, is directed to consider the matter afresh after providing opportunity of hearing to the petitioner and issuing notice to him as well in accordance with law by passing a reasoned and speaking order within 03 months from the date of certified copy of this order. Thereafter, the question of grant of regular monthly pension to the petitioner shall also be considered by the respondents concerned.

7. A plain reading of the aforesaid direction makes it clear that the earlier recovery order was set aside with a direction to the competent authority to reconsider the matter afresh in accordance with law. The earlier order did not finally adjudicate that the alleged excess payment was irrecoverable in all circumstances. Consequently, the setting aside of the earlier order cannot be construed as an absolute prohibition against passing a fresh order after complying with the directions issued by this Court.

8. The petitioner's objection that the respondents were precluded from initiating fresh recovery proceedings merely because the earlier order had been set aside is, therefore, not sustainable. The validity of the subsequent order, however, remains subject to compliance with the directions contained in the earlier judgment and the applicable law.

9. The Supreme Court in the matter of ***Chandi Prasad Uniyal v. State of Uttarakhand, (2012) 8 SCC 417*** has held thus in paras 8, 13 & 14:

> 8. We are of the considered view, after going through the various judgments cited at the Bar, that this Court has not laid down any 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 irregular/wrong fixation of pay be recovered.
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> xxx xxx xxx
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> 13. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.
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> 14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise

> where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

10. Very recently in the matter of ***Dr. M.K. Ravi Varma and Others v. National Institute of Technology and Others, 2026 SCC OnLine SC 2210***, the Supreme Court considered the principles governing recovery of excess payments with reference to ***Rafiq Masih*** (supra), ***Chandi Prasad Uniyal (supra), Thomas Daniel v. State of Kerala, 2022 INSC 498,*** and ***High Court of Punjab & Haryana v. Jagdev Singh, (2016) 14 SCC 267***. In paragraph 12 to 17 & 24 of the judgment, the Supreme Court observed:

> "12. What logically follows from a bare reading of the above passage is that Chandi Prasad Uniyal (supra) was held to have declared the law in exercise of this Court's jurisdiction under Article 136 of the Constitution, which we understand would be binding on all courts under Article 141; whereas Sahib Ram (supra) and Shyam Babu (supra) were held to be decisions where this Court had invoked powers under Article 142 thereof.
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> 13. Despite the line of decisions following Sahib Ram (supra) and Shyam Babu (supra) being held by the 3-Judge Bench to be decisions invoking Article 142 of the Constitution which, according to us, do not have the efficacy of a binding precedent, the coordinate Bench in Rafiq Masih (White Washer) (supra) did not apply the law laid down in Chandi Prasad Uniyal (supra) and preferred to abide by the course of action adopted in Sahib Ram (supra), Shyam Babu (supra) and Syed Abdul Qadir (supra).

14. We have also found that Thomas Daniel (supra) neither considers Chandi Prasad Uniyal (supra) nor the 3-Judge Bench decision in Rafiq Masih (supra).

15. Curiously, not a single precedent has remarked on the applicability of Section 7215 of the Contract Act, 1872; however, without referring to it, we find that the ratio of Chandi Prasad Uniyal (supra) draws inspiration from it.

16. It is farthest from our mind to cast any shadow of doubt on either of the two decisions of the coordinate Benches in Rafiq Masih (White Washer) (supra) and Thomas Daniel (supra). The above discussion is necessitated only for the purpose of highlighting that the law, perhaps, has not developed on correct lines. Be that as it may, while considering the present appeal, we are not required to be guided by either of the aforesaid two decisions, in view of the stark factual distinction and the able guidance that can be drawn from another subsequent decision of a coordinate Bench of this Court in High Court of Punjab & Haryana v. Jagdev Singh16 .

17. In Jagdev Singh (supra), the coordinate Bench considered paragraph 18 of Rafiq Masih (White Washer) (supra), extracted above, and explained the legal position as follows:

> "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."

24. Insofar as the circumstance of hardship canvassed by learned counsel for the appellants is concerned, we need to observe that no such case had been pleaded in the writ petition. In any event, whether recovery of money would result in hardship has to be determined on the facts of each particular case. After all, we cannot presently conceive of a situation where recovery of money from the recipient would not cause hardship. However, for instance, if it is pleaded and proved to the satisfaction of the writ court that entirety of the excess payment received by the employee has since been spent towards medical treatment and that the employee concerned would face immense hardship in returning such excess payment, or if the same were recovered from him through initiation of appropriate proceedings, in a deserving case the Court would be justified in quashing the notice

> seeking recovery or refund. This would also be subject to the employee satisfying the Court that the excess payment was not received on account of any misrepresentation or fraud on his part. Since no such case exists here, the contention is rejected.

11. In the aforesaid decision, the Supreme Court categorically emphasised that the permissibility of recovery must be determined in the light of the applicable rules and the facts of the individual case. It further observed that the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients.

12. In the present case, there is nothing on record to indicate that the petitioner has pleaded or mentioned about the details of his bank account, property, etc. or substantiated any exceptional circumstances warranting protection against recovery on the ground of financial hardship. In fact, no material has been placed before this Court to demonstrate that repayment of the alleged excess amount would cause such undue hardship as to justify interference with the recovery proceedings. As observed by the Hon'ble Supreme Court in ***Dr. M.K. Ravi Varma (supra)***, the question of hardship has to be determined on the facts of each particular case, and the same must be pleaded and established to the satisfaction of the Court. In the absence of any such pleading or supporting material, no case for interference on the ground of exceptional hardship is made out.

13. In the present case, the respondents contend that the amount sought to be recovered was paid in excess of the petitioner's lawful entitlement on account of erroneous pay fixation. The earlier order of this Court

required reconsideration of the matter and did not, by itself, confer upon the petitioner an unconditional right to retain any amount found to have been paid in excess of his entitlement. The objection founded upon the earlier round of litigation, therefore, does not by itself warrant interference with the impugned order.

14. In view of the foregoing discussion and applying the well settled principles of law into the facts of the present case, the writ petition is liable to be and hereby **dismissed**.

SD/-
(Bibhu Datta Guru)
JUDGE

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Head Note

Excess payment made to the Government employee by mistake can always be recovered barring few exceptions of extreme financial hardship, but not as a matter of right. It is a “taxpayers’ money”. The same neither belongs to the Officer who has made over payment nor the employee who has received it.