

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 4903 of 2007

Krishana Kumar Gupta, S/o Late Ram Sunder Sao, aged about 68 years,
R/o Village & Tahsil Jashpur Nagar, District Jashpur (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Ministry of Forest Department, DKS Bhawan, Raipur, District-Raipur (CG)
2. The Collector, Jashpur, District - Jashpur (C.G.)
3. The District Forest Officer, And Officiated Managing Director, District Union, Janspur, district - Jashpur Nagar, District - Jashpur (C.G.)
4. Conservator Of Forest And Officiating General Manager, Surguja, forest Circle Ambikapur, District - Surguja (C.G.)

---- Respondents

For Petitioner:	Shri Awadh Tripathi, Advocate.
For Respondents/State:	Shri Bhupendra Singh, PL.

Single Bench: Hon'ble Shri P. Sam Koshy, J
Order On Board

24.08.2015

The present petition has been filed challenging Annexure P-1 dated 20.5.2004, wherein the respondents have ordered an amount of Rs.41,426/- to be recovered from the petitioner on account of certain excess payment made to him by the Department while he was in service.

2. Counsel for the petitioner submits that the petitioner had retired from service on attaining the age of superannuation i.e. on 31.7.2003 from the post of 'Head Clerk' under the respondents and subsequent to his retirement, his retiral dues have also been settled and suddenly, vide the impugned order, a notice of recovery of Rs.41,426 has been issued directing the petitioner to make the payment to the respondents. He further submits that it is not a case where the said alleged excess amount paid to the petitioner has been obtained by any misrepresentation or fraud played by the petitioner and that if at all the said

amount has been received by the petitioner, the same was on account of the error on the part of the respondents and for which the petitioner, much after his retirement now, cannot be penalized by issuing the said order of recovery. He further submits that the said issue is also squarely covered by a decision of this Court in the case of Chandramani Dubey vs. State of Chattisgarh & Ors passed in W.P.(S) No.6664 of 2014 dated 18.3.2015.

3. State counsel, opposing the writ petition submits that it is a case where the respondents, subsequent to the retirement of the petitioner came to know that while he was on deputation, was by mistake paid certain excess amount which otherwise the petitioner was not entitled as per the rules and therefore, the order of recovery issued by the respondents is justified and is in accordance with the Rules.

4. The law in respect of the recovery is by now well settled by a catena of decisions starting from 1995 SCC, Supl. (1) 18 JT 1995 (1) 24 in the case of Sahib Ram Vs. The State of Haryana and Others and the most recent being the case of State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. reported in 2015 AIR SCW 501, wherein it has been repeatedly and in very categorical terms held by the Supreme Court that in the event if any excess payment has been paid to an employee for no fault of the employee and the said amount has been paid to him without there being any misrepresentation or fraud played by the employee, the recovery of the said amount would be improper on the part of the employer. It has been held in paragraphs-11 & 12 as under:-

“11. Recovery of excess payment, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he

was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

“12. xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx

- (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.”

5. A perusal of the return filed by the respondents would also reveal that it is not the case of the State Government that the alleged excess amount has been paid to the petitioner/employee because of any misrepresentation made by him or that the excess amount has been paid to him because of some act on his part. On the contrary, a perusal of the reply would give us an inference that it was an error on the part of the Accounts Department of the respondents for having granted the excess amount to the petitioner without verifying the rules so far as the entitlement of the petitioner is concerned.

6. In view of the above given facts and also keeping in view the decisions of Hon'ble the Supreme Court referred to in the earlier paragraphs, the present petition deserves to be allowed.

7. The impugned order of recovery Annexure P-1 as also the order Annexure P-4 whereby the appellate authority on an appeal had been rejected, set aside and quashed. Consequently, the instant petition is allowed. No order as to costs.

Sd/-
(P. Sam Koshy)
J U D G E

Priya