

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) NO. 7414 OF 2009

Arun Kumar Sharma, S/o Shri R.S. Sharma, aged about 65 years, working as Retired Sub-Engineer, Office of the Water Resources Department, R/o Vidya Nagar, Near Shiv Mandir, Bilaspur, District-Bilaspur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Department of Water Resources, D.K.S. Bhawan, Raipur (C.G.)
2. The Engineer-in-chief, Department of Water Resources, Government of Chhattisgarh, Raipur (C.G.)
3. The Executive Engineer, Water Resources Division, Kota, District- Bilaspur (C.G.)
4. The Joint Director, (Treasuries, Accounts and Pensions), Bilaspur (C.G.)
5. The Assistant Director, (Treasuries, Accounts and Pensions), Bilaspur (C.G.)
6. The District Treasury Officer, (Treasuries, Accounts and Pensions), Bilaspur (C.G.)

... Respondents

For Petitioner	:	None for the Petitioner.
For Respondent-State	:	Mr. B. Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/11/2015

1. None for the Petitioner.
2. The challenge in the present petition is to the order dated 29.10.2005, Annexure P-1, whereby the Respondents have ordered for recovery of Rs. 92,010/- from the payments payable to the Petitioner on his retirement.
3. The fact from the record of the writ petition as has not been disputed by the other side is that impugned order has been passed without giving any opportunity of hearing to the Petitioner. Further, it

has also been established that the said amount paid by the Respondents to the Petitioner was not on any misrepresentation made by the Petitioner but was on account of some mistake and error on the part of the officers of the Respondents for which the Petitioner cannot be blamed.

4. So far as the issue of recovery of excess payment made to a government employee is concerned, the matter by now stands well settled by a series of judgments of the Supreme Court starting from the case of *Sahib Ram v. State of Haryana and others* [1995 Supp. (1) SCC 18] and the latest being *State of Punjab and others etc. v. Rafiq Masih (White Washer) etc.* (2014 8 SCC 883). It is also a settled law that the State Government always has a right for recovering any amount from the employee in case the employee has been wrongly paid something in excess subject to granting opportunity of hearing to the employee and conducting an enquiry so as to ascertain the liability part.

5. The Supreme Court in the case of *State of Punjab and others v. Rafiq Masih* (supra) has held as under:

- “(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D').
- (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.”

6. However, from the record it is evidently clear that no such efforts have been made on the part of the Respondents before issuance of order of recovery.

7. Relying upon the aforesaid decision of the Supreme Court, this High Court also in some of the writ petitions, i.e. Writ Petition (S) No. 1495 of 2013 (Smt. Kunti Bai v. State of Chhattisgarh and others) decided on 10.2.2015, Writ Petition (S) No. 6664 of 2014 (Chandramani Dubey v. State of Chhattisgarh & Others) decided on 18.3.2015 and Writ Petition (S) No. 4793 of 2008 (V. V. Malaiya v. State of Chhattisgarh & Others) decided on 21.8.2015, has held that in case if any payment has been by inadvertence on the part of the department and which has been made without there being any misrepresentation or fraud played by the employee concerned, the recovery order issued by the department has been held to be illegal.

8. In view of the judicial pronouncement referred herein above and also taking into consideration the facts of the present case, particularly the contentions of the State Government in their reply, it admittedly stands establish that excess payment made to the Petitioner was on account of mistake that occurred at the government end and that there has been no misrepresentation or fraud played by the Petitioner whatsoever, the action on the part of the Respondents in recovery of the excess payment against the Petitioner at this stage is not proper and legal.

9. Accordingly, the present writ petition is allowed and the impugned action of ordering for recovery is set aside/quashed.

10. The writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge