

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4853 of 2010**

- Narayan Singh Thakur S/o Shri Ramdhari Singh Thakur, aged about 73 years, Retired Chief Municipal Officer, Nagar Panchayat Naya Baradwar, R/o Rajapara, Ward No.3, Sakti, Distt. Janjgir Champa (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh through the Secretary, Department of Local Administration and Development Ministry, DKS Bhawan, Raipur (CG).
2. State of M.P. Through The Secretary, Department Of Local Administration and Development Ministry, Vallabh Bhawan Bhopal (MP)
3. Director, Department Of Local Administration And Development Ministry, Raipur (CG)
4. Director, Department Of Local Administration And Development Ministry, Raipur (CG)
4. Director, Department Of Local Administration And Development Ministry, Bhopal (MP)
5. Deputy Director, Department of Local Administration and Development Ministry, Raipur (CG).
6. Nagar Panchayat Naya Baradwar, Tahsil Sakti, Distt. Janjgir Champa (CG)

---- Respondents

For Petitioner	Shri Deepak Kumar Singh, Advocate.
For Respondent/State of MP	Shri Sachin Singh Rajput, Advocate.
For Respondents/CG State	Shri B. Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05/11/2015**

1. Challenge in this writ petition is to the action on the part of the

Respondents in recovering an amount of Rs.65,010/- from the gratuity payable to the Petitioner.

2. Counsel for the Petitioner submits that said action of Respondents for recovery from gratuity is illegal and arbitrary as the same has been made without proper inquiry nor any opportunity of hearing was afforded to the him before deduction was made. He would further submit that the Petitioner has retired from service on 31.03.1997 and till he retired, there were no departmental inquiry pending nor was there any action on the the part of Respondents contemplating departmental enquiry against the Petitioner pending on the date of retirement.
3. According to the Petitioner, a charge sheet was issued against the Petitioner in the year 1999, but the said inquiry has not been finalized nor any final order has been passed against the Petitioner, however, the Respondent authorities issued a show cause notice in respect of alleged purchase made by the Petitioner while he was in service. The Petitioner immediately filed his reply and raised objection that without conducting any inquiry the Respondent authorities simply on a preliminary investigation without taking into consideration the statement of the Petitioner or his defence held the Petitioner cannot be held liable for the damages caused in respect of purchase of plastic water pipes while he was in service. Thereafter, without initiating any further proceedings much after the petitioner retired, the Respondents straightway issued an order of recovery of an amount of Rs.65,010/- from the gratuity payable to the Petitioner. This according to the Petitioner is arbitrary, illegal and bad in law.
4. Counsel for the Respondents/State of Chhattisgarh opposing the petition

would submit that from perusal of record it appears that a show cause notice was issued to the Petitioner in respect of purchase of plastic water pipes and it was only after calling upon his reply the order of recovery was passed against the Petitioner. He would further submit that show cause notice infact was issued in respect of alleged purchase of plastic water pipes which is said to have been made by the Petitioner by manipulating and tampering with the documents and thereby caused loss to the State. Once the Petitioner purchased the plastic water pipes without following due process of law, the Respondent authorities have issue instructions for recovery of said amount from the gratuity payable to the Petitioner, and therefore, it cannot be said to be a case where the Petitioner is not responsible for the amount being recovered from him towards loss suffered by the State.

5. Considering the rival submissions put-forth the parties, the fact remains that in respect of loss incurred to the State on account of the action of the Petitioner, the order of recovery has been passed by the State Govt. not pursuant to any departmental enquiry nor was any proper inquiry conducted by the Respondent authorities in respect of alleged purchase wherein the Petitioner would have got an opportunity of defending himself. It was incumbent upon the Govt. to hold a proper departmental enquiry before holding the petitioner guilty and subsequently should also have conducted an enquiry to assess the loss attributed upon the petitioner.
6. The recovery order also does not reveal as to whether after the Petitioner was found guilty of causing damages to the Respondents in purchase of plastic water pipes, any further proceedings were drawn for recovery of

said amount from the Petitioner.

7. The law so far as recovery from the government servant is now well settled that in case if any amount has to be recovered, the same can be done only after at least complying with the basic principles of natural justice of affording opportunity of hearing to the Petitioner, which in the instant case is not available nor is it contended by the Respondents of having complied with.
8. In the absence of compliance of basic principles of natural justice of affording opportunity of hearing to the Petitioner, the action on the part of Respondents in issuance of recovery order is apparently bad in law. The same deserves to be and is hereby set aside. However, the right is reserved in favour of the Respondents/State for passing appropriate order of recovery after following due process of law.
9. The petition is allowed to the above extent.
10. Since the action on the part of Respondents in issuance of recovery order itself has been held to be bad in law, it is ordered that if the State Govt. does not choose to conduct enquiry any further, the amount withheld by the State Govt. both under the gratuity head as well as 20 percent of pension, which has been withheld by the State till now, shall also to be released promptly to the Petitioner. No order as to costs.

Sd/-
(P.Sam Koshy)
JUDGE