

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 3656 of 2010**

Rai Singh Netam S/o Manchraram Netam, Retired Gram Sahayak, R/o
Village Pipara, Post Pipara Bahigaon, Tahsil Keskhal, Distt. Bastar (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary Panchayat & Social Welfare Department, D.K.S. Bhawan, Mantralaya, Raipur (CG)
2. Up Sanchalak, Panchayat & Social Welfare Department, Raipur (CG)
3. Deputy Director, Panchayat & Social Welfare Department, Bastar, Distt. Jagdalpur (CG)

---- Respondents

For Petitioner:	Shri D. N. Prajapati, Advocate.
For Respondents/State:	Shri Bhupendra Singh, PL.

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

18.09.2015

The present petition has been filed challenging the order dated 21.02.2008 Annexure P-1 wherein the petitioner has been ordered to deposit the amount of pension made to him since 20.12.2004 till passing of the impugned order.

2. Counsel for the petitioner submits that the petitioner got voluntary retirement on 20.12.2004 from the post of 'Gram Sahayak' under the respondents and subsequent to his retirement, his retiral dues have been settled. However, suddenly, by the impugned order, a notice of recovery of pension amount paid to the petitioner from 20.12.2004 to 21.02.2008 has been issued directing him to make the payment to the respondents. He further submits that it is not a case where the said alleged pension 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 voluntary 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 voluntary retirement of the petitioner, came to know that the petitioner was not entitled for pension as per Civil Services (Pension) Rule 42 which by mistake was being paid to the petitioner 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 pension amount has been paid to the petitioner/employee because of any misrepresentation made by him or that the pension 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 pension 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 to the extent of the issuance of impugned order

asking the petitioner to repay the pension amount which he has already received from 20.12.2004 till the date of issuance of the impugned order.

7. However, so far as the determination of the issue whether the petitioner would be entitled for pension or not is concerned, it is directed that the petitioner shall approach the respondents by making a detailed representation in respect of his claim for pension citing the provisions of rules by which he becomes entitled for pension. In case, the petitioner makes such representation within a reasonable period, the Authority concerned shall be obliged to decide the same as expeditiously as possible in accordance with the pension Rules governing the field.

8. It is made clear that this Court has not expressed any opinion so far as the entitlement of the petitioner for pension is concerned.

9. Accordingly, the impugned order of recovery dated 21.02.2008 Annexure P-1 is set aside and quashed. Consequently, the instant petition is partly allowed and disposed of to the extent mentioned above. No order as to costs.

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