

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) No. 432 OF 2012

Brijmohan Ram, S/o Shri Shital Ram, aged about 47 years, Occupation Peon, R/o Village Babhlma, P.O. Devgarh, District Surguja (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, School Education Department, D.K.S. Bhawan, Raipur (C.G.)
2. The Director, Public Instructions, Chhattisgarh at Raipur (C.G.)
3. District Education Officer, Ambikapur, Distt. Surguja (C.G.)
4. Joint Director, Treasury, Accounts and Pension, Ambikapur, Distt. Surguja (C.G.)

... Respondents

For Petitioner	:	Mr. Rahul Mishra, Advocate.
For Respondents	:	Mr. Wasim Miyan, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/10/2015

1. The Petitioner in the present writ petition is aggrieved by the action on the part of the Respondent - State Government whereby the entry has been made in the service record of the Petitioner showing that certain excess payment has been by way of wrong fixation to the Petitioner from 19.1.2001 to 30.6.2011 and accordingly it has been ordered for the recovery of the said excess payment made to the Petitioner.

2. The State Government opposing the writ petition filed their reply stating that due to an inadvertence on the part of the department, wrong fixation of the pay scale had been given to the Petitioner and the same was detected by the accounts department and orders have been issued for rectification of the same and for recovery of the excess payment to the Petitioner.

3. The State Government further relied on Annexure R-2 which is an undertaking given by the Petitioner to the department that in the event if any wrong fixation having been detected, the recovery of the same can be made from the monthly salary payable to the Petitioner.

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 and the pleadings, 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, if any, 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 and also the fact that the Petitioner is a low paid Class-IV employee, 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. Needless to mention that this Court has not expressed any opinion so far as rectification of granting wrong fixation of pay to the Petitioner is concerned.

10. The writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge