

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(S) No. 4793 of 2008**

V.V. Malaiya S/o Bhagirathi Malaiya, Working as Sub Engineer at Janpad Panchayat Chhuriya, District Rajnandgaon, C.G., R/o Village Bhasera, P.O. Pendra, Tehsil Rajim, District Raipur, C.G.

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of Panchayat & Rural Development Mantralaya, D.K.S. Bhawan, Raipur (CG)
2. Engineer-in-Chief, Rural Engineering Services, Govt. of Chhattisgarh, Raipur, C.G.
3. Collector, District Narayanpur, C.G.
4. Sub Divisional Officer, Rural Engineering Services, Narayanpur, C.G.
5. Chief Executive Officer, Janpad Panchayat Orchha, District Narayanpur, C.G.
6. Chief Executive Officer, Janpad Panchayat Chhuriya, District Rajnandgaon, C.G.
7. S.L. Rajan, Chief Executive Officer, Janpad Panchayat Orchha, District Narayanpur, C.G.

---- Respondents

For Petitioner : Shri Hemant Kesharwani, Advocate
 For Respondents/State: Shri B. Gopa Kumar, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****21/08/2015**

By way of the present writ petition the petitioner has questioned the issuance of last pay certificate and Service Book whereby the respondents have shown recovery of Rs.2,00,000 towards adjustment of the advance received by him. In addition, the petitioner has also sought for a relief of direction to the respondents for releasing certain other amounts in respect of the work which he had got executed while working as a Sub Engineer under the respondents.

2. Counsel for the petitioner submits that the said issue is also squarely covered by a decision of this Court passed in W.P.(S) No. 6664 of 2014 dated 18.03.2015 in the case of Chandramani Dubey v. State of Chhattisgarh and others. According to him, in the instant case also the admitted facts would show

that the petitioner was not at fault for getting the benefits that he has got nor is it the case of the respondents that the petitioner has got the said benefit by making any misrepresentation or playing fraud and therefore the issue of recovery in the light of the above referred judgment is not sustainable and deserves to be quashed.

3. A perusal of the record would show that though the State has filed its return, the same has not been supported with any documentary proof by which the order of recovery Annexure P-1 can be said to be issued by the respondents after conducting an enquiry or after granting an opportunity of hearing to the petitioner.

4. Admittedly, the law in respect of recovery from the salary of an government employee is by now well settled by a catena of decisions of the Hon'ble Supreme Court starting from the case of *Sahib Ram v. State of Haryana and Others* reported in 1995 Supp (1) SCC 18 and the latest being *State of Punjab and others etc. v. Rafiq Masih (White Washer) etc.* reported in 2015 AIR SCW 501. 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 Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** reported in **(2014) 8 SCC 883** 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 employees 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 Annexure P-1 which is an order of recovery.

7. In the light of the judgments of the Supreme Court as well as of this Court referred in the earlier paragraphs pertaining to the recovery, this Court is of the opinion that the order of recovery of Rs.2,00,000 issued against the petitioner at this stage is not proper and legal and is accordingly set aside. However, liberty is given to the respondents to conduct an enquiry and thereafter to assess the liability and also the responsibility of the petitioner by giving an opportunity of hearing to the petitioner before issuance of the order of recovery.

8. So far as the other relief in respect of the amount which is payable to the petitioner for the work which he has already got executed pertaining to the construction of two stages road from Orchha to Mandali Part-I and Orchha to Mandali Part-II is concerned, the petitioner is directed to approach the respondent Authorities with all necessary information available with him and the Authority concerned in turn shall look into the matter and take an appropriate decision in accordance with the rules.

9. With the aforesaid observation, the instant petition is disposed of in terms of the directions given herein above.

Sd/-
(P. Sam Koshy)
JUDGE