

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.S. No. 6312 of 2006**

Kunwar Singh Pawar son of late Lalu Ram Pawar, aged about 63 years,
resident of near Mannulal Shukla School, Gondpara, Bilaspur (CG).

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, School Education Department, DKS Bhawan, Mantralay, GE Road, Raipur (CG).
2. Principal, Government Basic Training Institute, Bilaspur (CG).
3. Joint Director, Treasury and Accounts, Bilaspur Division, Bilaspur (CG).
4. Accountant General of Chhattisgarh, Raipur (CG).

---- Respondents

For Petitioner	Shri HB Agrawal, Sr. Advocate with Shri Utkal Pradhan, Advocate.
For Respondent/State	Shri B. Gopa Kumar, Deputy Advocate General.

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

1. At the outset, learned counsel appearing for the Petitioner seeks to confine his claim only to the extent of excess recovery of Rs. 22,180/- made by the Respondents from the dues payable to the Petitioner. So far as other claims are concerned, the Petitioner seeks liberty to file a fresh petition, if the Petitioner so desires.
2. The prayer is not opposed by the Respondents counsel.
3. So far as the question of illegal deduction of Rs.22,180/- from the dues

payable to the Petitioner is concerned, the Respondents/State in its reply paragraph-4 has categorically admitted the fact that said deduction was made by the Respondents because of incorrect fixation made by the office of the Respondents. This fact reflected from the reply of the Respondents/State itself proves that the Petitioner is not to be blamed for such excess payment, if any, which he has received while he was in service.

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. xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx

(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 excess amount has been paid to the petitioner/employee because of any misrepresentation made by him or that the excess amount has been paid to him because of some act on his part. On the contrary, a perusal of the reply would establish that it was an error on the part of the concerned office for having granted the excess 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.

7. The impugned order of recovery Annexure P-9 is set aside and quashed. Consequently, the instant petition is allowed to the extent of order of recovery of excess payment of Rs.22,180/- being made against the Petitioner. So far as other claims which has now been given up by the Petitioner is concerned, the issues remain open for the Petitioner to challenge it by way of fresh petition, if he so desires. No order as to costs.

SD/-
(P. Sam Koshy)
JUDGE

inder