

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4159 of 2012

- Nirakar Yadav S/o Ganga Ram Yadav, Aged About 64 years Retired Patwari, Tahsil Kunkuri, Jashpur Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through, Secretary, Department of Revenue, D.K.S. Bhawan, Raipur, Chhattisgarh
2. The Joint Director Accounts Treasury and Pension, Ambikapur Division Surguja, Chhattisgarh
3. Tahsildar, Office of the Tahsildar, Kunkuri, District Jashpur, Chhattisgarh

---- **Respondents**

For Petitioner	: Shri K.P. Sahu, Advocate
For Respondent/State	: Shri Arvind Dubey, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

13/07/2015

1. Petitioner has preferred this writ petition seeking quashment of the order 15.10.2010/19.10.2010 (Annexure P-1), whereby the Office of Tahsildar, Kunkuri, District Jashpur (C.G.) has directed the petitioner to make recovery of Rs.17174/- and Rs.31487/- from the retiral dues/gratuity payable to the petitioner.
2. Petitioner was working as Patwari. He retired on 29/02/2008. By order dated 15.10.2010/19.10.2010, the Office of Tahsildar, Kunkuri, District Jashpur (C.G.) has directed to make recovery of Rs.17174/- and Rs.31487/- from the retiral dues/gratuity payable to the petitioner.
3. Relying on the judgment of Supreme Court in the matter of **Sahib Ram Vs. State of Haryana and others, 1995 Supp (1) SCC 18** which has

been followed by this court in the matter of ***Vidyadhar Tiwari Vs. The State of Chhattisgarh and others, 2006 (1) MPHT 105*** and ***Ramchandra Kurup Vs. State of C.G. & others, 2010 (3) CGLJ 400*** learned counsel for the petitioner would submit that recovery of excess payment cannot be made without giving any opportunity of hearing to the petitioner when payment has not been obtained by him by committing fraud or mis-representation.

4. On the other hand, learned State Counsel has relied on judgment of Supreme Court in the matter of ***Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors. 2012 AIR SCW 4742*** to argue that recovery of excess payment of public money paid to an employee has to be made as the concept of fraud or misrepresentation is not applicable to such situation. According to the learned State Counsel, any amount paid/received without authority of law can always be recovered.
5. In the matter ***Col. B.J. Akkara (Retd.) V. Government of India and others, [(2006) 11 SCC 709] : (2006 AIR SCW 5252)***, the Supreme Court has held that restraining recovery back of excess payment is granted by the courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees from the hardship that will be caused if recovery is implemented with further observation that a Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, and relief was granted in that behalf.
6. In ***Syed Abdul Qadir and others vs. State of Bihar and others [(2009) 3 SCC 475] : (2009 AIR SCW 1871)***, the Supreme Court

restrained the department from recovery of excess amount paid by holding thus :

“Undoubtedly, the excess amount that has been paid to the appellants – teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a *bonafide* mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.”

7. While holding in ***Chandi Prasad Uniyal (supra)*** that any amount paid/received without authority of law can always be recovered and the concept of fraud or misrepresentation is not applicable in such situation, the Supreme Court has clearly laid down the exceptions to the rule and the exceptions mentioned in the Judgment of ***Col. B.J. Akkara (Retd.) (supra)*** and ***Syed Abdul Qadir (supra)*** has been referred with approval. One of the exceptions carved out by the Supreme Court in the matter of ***Syed Abdul Qadir (supra)*** is that where the beneficiary of excess payment has either retired or is on the verge of it, to avoid any hardship to such employees/teachers, the recovery was quashed.
8. In the present case also the petitioner has retired in 29/02/2008. Steps for recovery of excess payment made to the petitioner on account of retiral dues/gratuity were initiated after retirement. Therefore, the case clearly falls within the exception carved out by the Supreme Court in the matter of ***Syed Abdul Qadir's case (supra)*** and approved in

Chandi Prasad Uniyal (supra).

9. For the foregoing reasons, this Court has no hesitation in quashing the impugned order Annexure P-1 whereby recovery of amount of Rs. 17174/- and Rs.31487/- have been directed on account of excess payment made to him without giving opportunity of hearing. The respondents are directed to refund the amount already recovered from the petitioner and they shall not recover any further amount. However, they would be at liberty to recover the amount in accordance with law applicable to a retired employee after giving due opportunity of hearing.
10. In the result, the writ petition is allowed with the liberty aforesaid.

Sd/-

JUDGE
(Prashant Kumar Mishra)