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**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 1467 of 2015**

- Rajkumar Sahu S/o Shri Jagannath Prasad Sahu, Aged About 63 years, Retired Head Master From Govt. Primary School, Kairwarpara Bodsara, Presently Resident At Opposite Gyan Bharti School Gali New Chandaniyapara Janjgir Block- Nawagarh, P.S. Janjgir, Distt. Janjgir-Champa (Chhattisgarh)

**---- Petitioner****Versus**

1. State of Chhattisgarh Through Department of Education Mahanadi Bhawan, New Raipur (Chhattisgarh)
2. The Director, Public Instruction Chhattisgarh Indrawati Bhawan Raipur, District Raipur (Chhattisgarh)
3. The District Education Officer, District Janjgir- Champa (Chhattisgarh)
4. The Block Education Officer, Block Nawagarh District Janjgir- Champa (Chhattisgarh)
5. The Joint Director, Accounts Treasury And Pension, Bilaspur (Chhattisgarh)

**---- Respondents**


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| For Petitioner       | : | Shri Ashwani Shukla, Advocate          |
| For Respondent/State | : | Shri Shashank Thakur, GA for the State |

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**Hon'ble Shri Justice Prashant Kumar Mishra****Order On Board****28/04/2015**

1. Petitioner has preferred this writ petition seeking following reliefs :

“10.1 That this Hon'ble Court may pleased to issue a writ in the nature of certiorari quashing the communication dated 14.05.2013 (Annexure P-1) and letter dated 29.06.2013 with recovery counting chart is made against the petitioner sum of Rs.1,61,243/- (Annexure P-2).

10.2 That this Hon'ble Court may pleased to direct the respondent authorities to sanction leave encashment and pensions of the petitioner with due interest @ 18% from the date of retirement.

10.3 That the Hon'ble Court may kindly be pleased to grant any other relief as it may deems fit and appropriate."

In respect of relief clause 10.1 :

2. Petitioner was working as Head Master, Primary School. He retired on 31/03/2013. By the impugned order, the amount of Rs.1,61,243/- has been recovered from the petitioner after his retirement.
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 on 31.3.2013. Steps for recovery of excess payment made to the petitioner on account of retiral dues were initiated after his 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 whereby recovery of amount of Rs.1,61,243/- has 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.

In respect of relief clause 10.2 :

10. Learned counsel for the parties would submit that the issue involved and the relief claimed in the present petition at para 10.2 are required to be considered by the pension committee.
11. This Court, in the matter of W.P. No. 4642/2004 (*Bajjnath Mandal v. The State of Chhattisgarh & Others*) and other connected matters, directed the Committee to consider the matter of retiral dues as the disputed question of facts were involved. The Committee was constituted by the State Government, pursuant to the order dated 19/06/2006 passed in W.P. No. 1961/2006 (*Smt. Keja Bai Chandrakar Vs. State Government and Others*) and order dated 13/03/2008 passed in M.C.C. No. 105 of 2008 (*State of*

*Chhattisgarh & Others V. Baijnath Mandal and another*). Thus, this petition is squarely covered by the judgment and order dated 31<sup>st</sup> of January, 2008 passed in W.P. No. 4642/2004 *Baijnath Mandal (supra)* as submitted by learned counsel appearing for the parties.

12. Office of the Advocate General is directed to send the case to the Committee, within a period of 15 days from the date of receipt of a copy of the petition from the petitioner and this order. Thereafter, the Committee shall issue notice to the petitioner and the officers concerned, within a further period of 15 days. The Committee shall consider and pass order, in accordance with law, after affording proper opportunity of hearing to the parties.
13. The petitioner shall supply extra copy of the petition to learned counsel appearing for the State/respondents for forwarding the same to the Committee.
14. In the result, the writ petition is allowed to the extent indicated above.

JUDGE

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