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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 6912 of 2008**

- S.L. Rathore S/o Late K.P. Rathore, aged about 62 years, Retired Sub Engineer Public Work Department R/o Kelo Vihar Colony Chakradhar Nagar Behind Police Station Raigarh (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Public Work, D.K.S. Bhawan, Raipur (C.G.)
2. Superintendent Engineer office Of Superintending Engineer Public Work Department Bilaspur Distt. Bilaspur (C.G.)
3. Executive Engineer Public Work Department Raigarh Division Distt. Raigarh (C.G.)
4. Treasury Officer Office Of Treasury Officer Raigarh (C.G.)
5. Prescribed Officer/ Joint Director Office Of Joint Director Treasury Account & Pension Department Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Shri Umesh Pandey, Advocate
For Respondents-State	:	Shri S. Majid Ali, PL for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****19/02/2016**

1. Petitioner has assailed the order of recovery of Rs.95,120/- which was made from him after retirement.
2. Petitioner retired as Sub-Engineer in the department of Public Works, Gharghoda, district Raigarh on 31-12-06. After his retirement, the petitioner was not paid the entire retiral benefits for the reason that he has not made payment of the above stated amount, however, the petitioner had deposited the amount of Rs.95,120/- sometimes in the year 2008 and thereafter the petitioner was paid pensionary benefits. The present writ petition was filed on 3-12-08 seeking refund of the amount on the ground that the recovery

has been made after his retirement and the petitioner was not at all responsible for making payment of the amount to the State Government. Perusal of the return would demonstrate that out of the said recovery amount, an amount of Rs.60,419/- has already been refunded to the petitioner but the remaining amount has not yet been refunded.

3. It is argued that recovery has been made after retirement without following the procedure prescribed under the Chhattisgarh Civil Services (Pension) Rules, 1976, nor any opportunity of hearing was afforded to the petitioner before directing recovery.
4. Learned State counsel would argue that the petitioner having already deposited the entire amount, the writ petition is not maintainable.
5. It appears, the petitioner was issued letter on 30-12-06 i.e. just a day prior to his retirement for deposit of the tools and instruments, however, it was not stated therein as to what are those tools and instruments which the petitioner was required to deposit nor it is mentioned that upon failure to return the tools and instruments recovery shall be made from the petitioner. Thus, the said letter dated 30-12-06 would not amount a show-cause notice for recovery of the amount in question.
6. In the matter of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others**¹, the Supreme Court has held thus in para 18:-

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III

¹ (2015) 4 SCC 334

and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

7. Although the present is not a case of excess payment but it is a case of recovery of the amount on petitioner's failure to deposit the tools and instruments which were issued to him during his service period, yet the principles of natural justice would be attracted even in such cases.
8. 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.
9. Since in the present case no notice was issued to the petitioner mentioning in detail names of the tools and instruments which the petitioner has not deposited nor there was any notice for recovery of the amount, the impugned action of making recovery and enforcing the petitioner to deposit the same for the purpose of finalization of his pension is held illegal.
10. Since the petitioner has already paid the amount, the same be refunded to

the petitioner within a period of three months from the date of submission of certified copy of this order before the competent authority.

Sd/-

Judge
Prashant Kumar Mishra

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