

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 1800 of 2010

- Kailash Narayan Dwivedi S/o Late Shri Ramdayal Dwivedi, R/o 84, New Miners Quarter, Godipara, Chirmiri, District Korea (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Department of Tribal, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. The Joint Director, Lekha Kosh Avam Pension Bilaspur (C.G.)
3. Lekha Kosh Avam Pension Ambikapur, Distt. Surguja (C.G.)

---- Respondents

For Petitioner:	Smt. Ranjna Jaiswal, Advocate.
For Respondents/State:	Shri Y.S. Thakur, Dy. Advocate General

Single Bench: Hon'ble Shri P. Sam Koshy, J
Order On Board

04.08.2016

The present petition has been filed challenging Annexure P-1 dated 05.01.2007, wherein Respondent No.2, The Joint Director, Lekha Kosh Avam Pension Bilaspur (C.G.) has ordered an amount of Rs.32,103/- to be recovered from retiral dues. Consequently, an amount of Rs. 32,103/- has been recovered from the retiral dues of the petitioner on account of certain excess payment made to him by the Department while he was in service.

2. Learned Counsel for the petitioner submits that the petitioner had retired from service on attaining the age of superannuation i.e. on 31.05.2006 from the post of 'Head Master' under the respondents and subsequent to his retirement, vide the impugned order, a notice of recovery of Rs.32,103/-- to be made from the retiral dues of the Petitioner and consequently has been the same amount has been recovered from the Petitioner from his retiral dues. She further submits that it is not a case where the said alleged excess amount paid to the petitioner has been obtained by any misrepresentation or fraud played by the petitioner and that if at all the said amount has been received by the petitioner, the same was on account of the error on the part of the respondents and for

which the petitioner, much after his retirement now, cannot be penalized by issuing the said order of recovery.

3. Learned State counsel, opposing the writ petition submits that it is a case where the respondents, subsequent to the retirement of the petitioner came to know that by mistake certain excess amount which otherwise the petitioner was not entitled as per the rules has been paid and therefore, the order of recovery issued by the respondents is justified and is in accordance with the Rules.

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. xxxxxxxxxxxx xxxxxxxxxxxx xxxxx

(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. The Supreme Court has very categorically held that recovery on part of the employees, particularly from the employees who are retired should not be made.

6. Learned Deputy Advocate General on perusal of the records accepts that the matter squarely covers the judgment of the Supreme Court so far as the recovery part is concerned. He however, prays for reserving right of the State Government for carrying out necessary rectification.

7. 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.

8. The impugned order Annexure P-1 to the extent of issuance of recovery is set aside and quashed. Consequently, the instant petition is allowed.

9. Taking into consideration the fact that there is an inordinate unexplained delay in the filing of the Petition, the Petitioner shall not be entitled for interest on the said amount for the intervening period i.e. from the date of the impugned order till the date of filing of the present petition. However, he shall be entitled for interest for the subsequent period.

10. The Respondents are hereby directed to refund the illegally recovered amount to the Petitioner with a simple interest of 6% per annum from the date of filing of this Petition i.e. from 19.04.2010 till the date of release of the refund amount to the Petitioner.

11. No order as to costs.

Sd/-
(P. Sam Koshy)
J U D G E