

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(S) No.7358 Of 2011**

Sukhsagar Prabhua, S/o Shri Govind, aged about 60 years,
R/o At Post Konargarh, Tahsil Pamgarh, District Janjgir-
Champa (CG) **---- Petitioner**

Versus

1. State of Chhattisgarh Through Secretary Health and Family Welfare, Mantralaya, Raipur (CG)
2. Block Medical Officer, Community Health Centre, Sakti, District Janjgir-Champa (CG).

---- Respondents

For Petitioner : Mr. Ram Kumar Tiwari, Advocate
For Respondents/State : Mr. Suvigya Awasthi, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****11/01/2016**

1. Heard.
2. Learned counsel appearing for the petitioner submits that the petitioner has retired from his service on the post of Dresser Grade-II on 05.01.2011 and, thereafter, order dated 02.05.2011 (Annexure P-5) has been issued by respondent No.2-Block Medical Officer, Community Health Centre, Sakti directing recovery of Rs.1,55,746/-, which is to be deducted from gratuity and pension of the petitioner, but order for recovery has been passed without issuing any show-cause

notice and without affording any opportunity of hearing despite the decisions rendered by the Supreme Court in the matter of **State of Punjab and others v. Rafiq Masih (White Washer) and others**¹ and by this Court in the matters of **Vidya Shankar Tiwari v. State of M.P. (Now State of Chhattisgarh) and others**² and **Ramchandra Kurup v. State of C.G. & others**³. In the aforesaid cases, it has been repeatedly held by the Supreme Court and by this Court that no recovery can be made without affording any opportunity of hearing. However, it appears that the authority, unmindful of settled legal position, has issued the impugned order dated 02.05.2011.

3. Learned counsel appearing for the State/respondents submits that the petitioner has been granted benefits on account of wrongly fixation of pay, therefore, excess amount is sought to be recovered from his gratuity and pension.
4. In these circumstances and in view of the law laid-down by the Supreme Court and by this Court in the aforesaid case, it is directed that the petitioner will be given proper show-cause notice and afforded proper opportunity of hearing against any recovery for whatever reason, including

1 (2015) 4 SCC 334

2 2006 (2) MPHT 31 (CG)

3 2010 (3) CGLJ 400

the reasons relating to excess payment on account of wrong fixation of pay before further deducting the amount from his salary. The aforesaid exercise shall be completed within three months from the date of receipt of certified copy of this order.

5. With the aforesaid observation, writ petition stands finally disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
JUDGE

L/-