

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 296 of 2013**

- C.K.Chandrakar S/o R S Chandrakar Aged About 61 Years 131, Behind Ramkund Life Birth Hospital, P.S. - Saraswati Nagar, Raipur C.G.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Irrigation Department Mantyralaya Bahwan New Raipur C.G.
2. Engineer In Chief Irrigation Department Shanker Nagar Raipur C.G.
3. Chief Engineer Irrigation Department Raipur C.G.
4. Superintendent Engineer Irrigation Department & Ground Water Survey Division Raipur C.G.

----Respondents

For Petitioner
For State

Mr. Y.C. Sharma, Advocate
Mr. S.P. Kale, Dy. Advocate General

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****23.12.2016**

1. The Present Petition under Article 226 of the Constitution of India has been filed challenging the order dated 03.05.2012 whereby the Respondents have issued order of recovery of Rs. 87,000/- from the amount of gratuity payable to the Petitioner.
2. Learned Counsel for the Petitioner contends that the said impugned order of recovery has been issued in contravention of settled principle of natural justice. He further submits that even before the issuance of the impugned order the Respondents have not even asked an explanation from the Petitioner side so as to determine whether the Rs.

87,000/- payable by the Petitioner was in fact due to be paid or not?

3. Counsel for the Petitioner further refers to Annexure P/4 dated 05.11.2004 and submits that the Petitioner had made representation to the Executive Engineer – Water Resources Division, Mahasamund seeking for certain information as regards the Rs. 87,000/- which is said to be lying in the credit of the Petitioner payable to the Respondent. However, since 2004 no action has been taken by the said authority by providing necessary details or have given any opportunity to the Petitioner in determining the amount lying in the credit of the Petitioner and therefore, the present Petition deserves to be allowed.
4. Learned State Counsel opposing the Petition submits that it is a case where the Petitioner while he was posted as Sub Divisional Officer at the Water Resources Department, Saraipali Division for a period from 13.07.1992 to 26.05.1995 an amount of Rs. 87,000/- had taken as miscellaneous advance which were shown against the name of the Petitioner and therefore, it cannot be said to be an illegal recovery on the part of the Respondents, nor it can be said that the Respondents had withheld something from the Petitioner which he had bonafidely got. It is a case where the State Government recovered an amount which is the expenditure lying in the credit of the Petitioner which he had received as miscellaneous advance while he was working as S.D.O. Saraipali Division for a period from 13.07.1992 to 26.05.1995, thus there is no illegality in the order.
5. 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

- (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.”

6. In the instant case if we look into the facts, the alleged payment as miscellaneous advance said to have been lying in the credit of the Petitioner was for the period a period from 13.07.1992 to 26.05.1995. The Petitioner has worked with the Respondent for about 15 long years and the State Government during these period also did not care to recover the said amount which was said to have been lying in the credit of the Petitioner who stood retired from services on 30.11.2011. It is only 6 months after the retirement of the Petitioner, the Respondent have woken up from slumber and ordered for recovery of 87,000/- from the amount of gratuity which was payable to the Petitioner. This action on part of the State Government is totally in contravention to the decision of the Supreme Court referred to in the preceding paragraphs.
7. Accordingly, the impugned order is thus set aside. It is ordered that the amount which has been recovered from the Petitioner by the Respondent shall be returned back forthwith to the Petitioner herein.
8. It is made clear that the quashing of the impugned order would not preclude the State Government from initiating appropriate proceeding for recovery of the said amount after providing an opportunity of hearing to the Petitioner in accordance with law.
9. With the aforesaid observation the present Writ Petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE