NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2232 of 2017

- A.G.Khan S/o Late Shri Karim Khan, Aged About 71 Years R/o Anand Vihar, Ward No. 8, Tehsil Kawardha, District Kawardha (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through : The Secretary, Food And Civil Supply Department, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)

2. Director, Directorate Of Treasury, Account & Pension, Raipur (Chhattisgarh)

3. Accountant General, Office Of Accountant General, Zero Point, Vidhan Sabha Road, Chhattisgarh, Raipur, District Raipur (Chhattisgarh)

4. Collector, Kawardha, District Kabirdham (Chhattisgarh)

5. District Treasury Officer, Kawardha, District Kabirdham (Chhattisgarh)

6. Food Inspector, Kawardha, District Kabirdham (Chhattisgarh)

---- Respondent

For Petitioner	Mr. Majid Ali, Advocate
For Respondent/State	Mr. Arvind Dubey, Panel Lawyer
For Respondent No.3	Mr. Rajkumar Gupta, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

15/5/2017

1. By this petition, the petitioner seeks quashment of the order-Annexure-P/6, whereby, the petitioner was directed to deposit

the minus balance of Rs.1,02,298/- under the GPF account.

2. The petitioner retired as Accountant, Food Department, on 31.5.2006. According to the petitioner, after his retirement, he received the communication dated 25.10.2007 directing the petitioner to deposit the minus balance amount of Rs.1,02,298/-. Thereafter, the petitioner submitted his representation and on considering the same by order dated 07.01.2013, the amount was reduced to Rs.57,995/-. The petitioner has, in fact, never received any communication in respect of minus balance of GPF account during his service period or immediately after his retirement. However, all of a sudden, the impugned order has been passed after lapse of more than one decade.

3. Relying on the judgment of Supreme Court in *Sahib Ram vs. State of Haryana and others*[1], which has been followed by this court in the matter of *Vidyadhar Tiwari vs. The State of Chhattisgarh and others*[2], and *Ramchandra Kurup Vs. State of C.G. & others*[3], 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 misrepresentation.

4. Learned State counsel has relied on judgment of Supreme Court in the matter of *Chandi Prasad Uniyal and Ors. Vs. State of*

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[1] 1995 Supp (1) SCC 18

[2] 2006 (1) MPHT 105

[3] 2010 (3) CGLJ 400

Uttarakhand and Ors.[4] 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*[5], 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*[6], 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

4 2012 AIR SCW 4742

5 [(2006) 11 SCC 709] : (2006 AIR SCW 5252)

6 [(2009) 3 SCC 475] : (2009 AIR SCW 1871)

> 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 Quadir* (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 an extremely recent case, in the matter of **State of Punjab & others Vs. Rafiq Masih (Whitewasher)**[7], the Supreme Court has taken a similar view holding thus in para 7:-

7 (2014) 8 SCC 883

"7. In *Chandi Prasad Uniyal case*, a specific issue was raised and canvassed. The issue was whether the appellant therein can retain the amount received on the basis of irregular/wrong pay fixation in the absence of any misrepresentation or fraud on his part. The Court after taking into consideration the various decisions of this Court had come to the conclusion that even if by mistake of the employer the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the excess payment so made could be recovered. While holding so this Court observed at paras 14 and 16 as under: (SCC p. 423)

"*14*. We are concerned with the excess payment of public money which is often described as 'taxpayers' money' which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. <u>Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay</u> the money, otherwise it would amount to unjust enrichment.

* * *

16. The appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a

> stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order that excess payment made be recovered from the appellant's salary in twelve equal monthly instalments........"

9. Thus, in Rafiq Masih (Whitewasher) *(supra),* also the Supreme Court did not differ with the earlier view in *Col. B.J. Akkara (Retd.)* (supra) and *Syed Abdul Qadir* (supra) that any amount paid/received without the authority of law can always be recovered barring few exceptions of external hardships. Paras 10 & 11 of Rafiq Masih (Whitewasher) *(supra)* are reproduced hereunder:-

> "10. Article 136 of the Constitution of India, confers a wide discretionary power on the Supreme Court to interfere in suitable cases. Article 136 is a special jurisdiction and can be best described in the words of this Court in *Ramakant Rai v. Madan Rai*[8], (SCC p.403, para 14),
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> " 14....It is a residuary power, it is extraordinary in its amplitude, its limits, when it chases injustice, is the sky itself".
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> 11. Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vests a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in *Union of India v. Karnail Singh*[9], it makes the law operational to

8(2003) 12 SCC 395
9(1995) 2 SCC 728

> make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution."

10. In the matter of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others**[10], 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:
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> (*i*) Recovery from the employees belonging to Class III 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."

11. In the present case also the steps for recovery of excess payment from the petitioner was initiated after his retirement.

12. Since the petitioner was not working on any gazetted post and

10 (2015) 4 SCC 334

was not a highly paid employee, the present case squarely fall within the exception carved out by the Hon'ble Supreme Court in the matters of Syed Abdul Qadir (Supra), *Chandi Prasad Uniyal* (Supra) and the second case of Rafiq Masih (White Washer) (Supra).

13. For the foregoing, this Court has no hesitation in quashing the impugned order Annexure P/6.

14. Accordingly, the writ petition is allowed to the extent indicated above.

Sd/-

Judge

(Prashant Kumar Mishra)

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