

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 1207 of 2016**

Naval Kishore Mishra S/o Shri Ambika Prasad Mishra, Aged About
70 Years, R/o Village Harratola, Post Lalpur, Tahsil Pendra Road,
P.S. Pendra, District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Irrigation Department,
Mahanadi Bhawan, New Mantralay, Raipur Chhattisgarh
2. The Engineer in Chief, Water Resources Department, Mahanadi
Bhawan, New Mantralay, Raipur, Chhattisgarh
3. The Chief Engineer, Hasdeo Kacchar, Water Resources Department,
Bilaspur, Chhattisgarh
4. The Superintendent Engineer, Maniyari Hasdeo Division, Bilaspur,
Chhattisgarh
5. The Executive Engineer, Water Resources Division, Pendra Road.
District Bilaspur, Chhattisgarh
6. Deputy Director, Account, Treasury and Pension, Bilaspur,
Chhattisgarh

---- Respondents

For Petitioner	:	Shri Prakash Tiwari, Advocate
For Respondent/State	:	Shri Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****16/07/2018**

Challenge in the present writ petition is Annexure P-1 which is an
order dated 31.03.2016 whereby the respondents have ordered for

recovery/adjustment of an excess amount paid to the petitioner on account of erroneous fixation of pension to the extent of Rs.1,88,662.

2. It is a case where the petitioner who stood retired from service w.e.f. 31.05.2006 was not granted pensionary benefits and the petitioner had to pursue a series of litigations to get that relief from the Court and thereby it was ordered that the petitioner would be entitled for pensionary benefits. In the course of implementation of the order, the respondents in stead of fixing the pension of the petitioner @ Rs.3025 had fixed it @ of Rs.3850 with dearness allowance and thereby the petitioner was paid a lump sum amount of Rs.6,67,128/- whereas he was entitled only for Rs.4,78,466/-. It is this difference amount of Rs.1,88,662/- which has been sought to be recovered from the petitioner as excess payment made to him.

3. Counsel for the petitioner submits that the authorities concerned could not have issued such an order as it is a clear violation of Rule 9 (1) of the Chhattisgarh Civil Services (Pension) Rules, 1976 where the power to withhold or withdraw pension is conferred only upon the Governor. He further submits that the order of recovery initiated by the respondents is also hit by the judgment of the Supreme Court in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) and Others.** reported in **(2015) 4 SCC 334**. Thus, prayed for the quashment of the said order and for a direction to the respondents to refund the excess amount recovered from the petitioner.

4. State counsel, however, submits that pursuant to the impugned order Annexure P-1, the petitioner has voluntarily deposited the entire difference amount of Rs.1,88,662/- and immediately after receiving the excess amount from the petitioner, the respondents have since ordered and released the

monthly pension payable to the petitioner which is being paid to him uninterruptedly at the rectified rate of Rs.3025 with dearness allowance. Therefore, there is nothing further left to be adjudicated upon in the present writ petition and the same deserves to be rejected. He further submits that it is a case where in the process of compliance of the order of this Court, due to erroneous fixation of pay, the petitioner was paid an amount of Rs.6,67,128/- in February, 2016 and the order of recovery was issued on 30th March, 2016 i.e. within a short span of 1 ½ months, therefore, the petitioner cannot claim that the excess payment was paid to him long ago which would make the recovery impermissible. Thus, prayed for rejection of the writ petition on this count also.

5. Having heard the contentions put forth on either side and on perusal of the record what reflects from the impugned order Annexure P-1 is that it is not an order whereby pension has been withheld or withdrawn. It is an order where the respondents authorities found some erroneous fixation of pension being extended to the petitioner on account of which certain excess payment was made and it was only ordered for adjustment of the excess amount of Rs.1,88,662/-. The petitioner does not dispute the fact that he was not entitled for pension @ 3850 with dearness allowance rather he was entitled for pension @ 3025, thereby the rectification on the part of the respondents is not under challenge by the petitioner. It is only the order of recovery against which the petitioner primarily seems to be aggrieved of. The error detected by the respondents is within a short span of less than 2 months time. What is all the more important is that the petitioner has immediately after releasing of the said order deposited the excess amount back to the State Govt. and thereafter the respondents have started

releasing the monthly pension in usual course without there being any further interruption.

6. Given the facts that the excess payment has been made good by the petitioner to the State Govt. and the respondents have also started releasing of the monthly pension regularly, this Court finds it difficult to pass an order in favour of the petitioner in the given contextual background. It is always the right of the respondents to carry out the rectification part and seeking for recovery of the excess payment if any. The petitioner having paid the excess money back to the State Govt., now he cannot claim for refund of the same from the State Govt. which the petitioner has paid back to the respondents voluntarily and admittedly, the said payment was on account of excess payment made to the petitioner on account of erroneous fixation of pension.

7. Given the said facts and circumstances, this Court does not find any strong case made out by the petitioner for interfering with the impugned order of recovery much less even for ordering easy installment of recovery as the entire amount has already been paid by the petitioner to the respondents.

8. The writ petition thus fails and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**