NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 947 of 2013

Harishchandra Shrivastava S/o P.L. Shrivastava, Aged About 71 Years, Retired Assistant Registrar, Cooperative Societies, District Janjgir, Chhattisgarh, R/o Mahant Up Nagar, Near Reliance Tower, Police Station City Kotwali, Janjgir, District Janjgir Champa, Chhattisgarh

---- Petitioner

Versus

1. State Govt. of C.G. Through The Secretary, Cooperative Department, D.K.S. Bhawan, Raipur, Police Station Rakhi, Raipur, District Raipur Chhattisgarh
2. The Secretary, State Govt. of C.G., Finance Department, D.K.S. Bhawan, Police Station City Kotwali, Raipur, Chhattisgarh
3. Divisional Sanyukta Sanchalak, Kosh, Lekha and Pension, Police Station City Kotwali, Bilaspur, District : Bilaspur, Chhattisgarh
4. Collector, District Janjgir Champa, Chhattisgarh
5. District Treasury Officer, Janjgir-Champa, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Mr. Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/04/2018

1. The challenge in the present writ petition is to the order of the High Power Committee constituted for redressal of the grievance pertaining to the pension and retiral dues payable to a government employee.

2. The present is a second round of litigation. The earlier round of litigation was WPS No. 2783/2012, wherein the writ petition was disposed of on 13.03.2008 with a direction that the matter of the petitioner be scrutinized by the High Power Committee.

3. The grievance of the petitioner as such is that the petitioner stood

retired as an Assistant Registrar from the Cooperative Department of the State Government on 22.07.2000. At the time of his retirement, the petitioner had applied for commutation of pension of an amount of Rs.87,754/-. The respondent authorities entered into an agreement with the petitioner in this regard and it was agreed by the parties that the commuted pension shall be recovered from his monthly pension till the petitioner attained the age of 70 years or 15 years from the date of superannuation, whichever is earlier. Accordingly, the petitioner whose normal pension was Rs.4181/- was paid the reduced pension of Rs.2788/- per month. Thus there was a deduction of Rs.1393/- being made from the monthly pension payable to the petitioner which was to be continued till 26.06.2011 i.e. the date on which the petitioner attained the age of 70.

4. The counsel for the petitioner submits that though he had crossed the age of 70 on 26.06.2011 and thereafter he was entitled for the full pension of Rs.4181/- the respondents have not released the full pension, but have extended the reduced pension for another period of 5 years, which would mean that the petitioner would further get reduced pension till 2016.

5. This according to the petitioner is per se, illegal and is contravention to the agreement entered into between the parties and is without the knowledge and consent of the petitioner. According to the petitioner, the total amount of commutation made by the petitioner was for an amount of Rs.87,759/- and till 2011 the respondents have already recovered more than double the said amount i.e. around Rs.1,83,000/-.

6. He submits that if the petitioner was to get the reduced pension till the age of his attaining 75 years, the monthly deductions made by the respondents would have got further reduced from Rs.1393/- which was otherwise being deducted.

7. According to the petitioner, once having calculated the total recovery to be made by the respondents and it was agreed that it would be recovered till the petitioner attains the age of 70 years, the respondents suo moto without the notice or consent of the petitioner could not have enhanced the period beyond 26.06.2011. According to the petitioner, there are certain recoveries made by the respondents in between the date on which the petitioner has attained the age of 70 years and the interim protection granted by this Court on 09.04.2013 and the said excess amount recovered should be refunded with interest to the petitioner and the respondents should be ordered for releasing of the full pension to the petitioner from the month of July, 2011 onwards.

8. The State counsel however opposing the petition submits that since the scheme of commutation on the date of retirement of the petitioner itself stood modified on 07.02.2000 and it was held that the commutation amount should be recovered within 15 years from the date of retirement or attaining the age of 75 years, whichever is later and therefore by virtue of the said notification dated 07.02.2000, the recovery period had been extended till he attains the age of 75 years and therefore there cannot be said to be illegality or irregularity committed by the respondents and prayed for dismissal of the writ petition.

9. Having heard the contentions put forth on either side and on perusal of the record, undisputedly the petitioner stood retired on 22.07.2000. Thereafter the petitioner had claimed for commutation of his pension, which stood allowed by the respondents. He was permitted to commute an amount of Rs.87,759/- at the time of his retirement. The respondents agreed to recover the same by an agreement entered into between the parties on 25.09.2000, wherein it was agreed that the said amount shall be recovered within 15 years from the date of retirement or the employee attaining the age of 70 years, whichever was earlier. The said agreement has never being modified or sought to be modified by the respondents at any point of time. Neither have respondents ever intimated the petitioner so far as the change in policy or the unacceptability of the agreement. The respondents continued to pay the petitioner the reduced pension even on his crossing the age of 70 years.

10. Since the petitioner at no point of time was informed about the alleged erroneous agreement entered into between the parties. The respondents were not justified in extending the period for another 5 years after the petitioner having crossed the age of 70. The petitioner should have been immediately intimated about the same at the time of his retirement itself or at the time when the commutation was made. Moreover, the respondents must have definitely calculated the commuted amount to be recovered from the date of commutation till the petitioner attained the age of 70 years and thereafter they had fixed the monthly recovery to be made of Rs.1393/-. If the period was to be extended till the petitioner attained the age of 75, definitely the

amount of deduction per month to be made would have got reduced further. As such it appears that the entire amount commuted has been calculated in a manner that it is recovered till the petitioner attained the age of 70 and the recovery has been made. Any recovery made beyond that would amount to an illegal recovery being made by the respondents and the recovery being made without any sort of an agreement or consent with the petitioner.

11. The said impugned act on the part of the respondents therefore is not sustainable and the writ petition deserves to be and is accordingly allowed. It is ordered that the petitioner shall be entitled for the full pension with effect from the date on which he has attained the age of 70 and thereafter. Any recovery which has been made by the respondents beyond the period of the petitioner attaining the age of 70, the same shall be refunded to the petitioner forthwith with interest @ 9% per annum till it is paid back.

12. The writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved