

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 948 of 2013**

1. Dr. H.R. Tharwani, Aged about 72 years. S/o. P. Tharwani, Retired Medical Officer, Near SBI Janjgir, Police Station Janjgir, District Janjgir-Champa Chhattisgarh

1a. Smt. Rajkumari Thawani, W/o. Late Dr. Hansraj Tharwani, Aged about 70 years.

1b. Ajay Tharwani, S/o. Late Dr. Hansraj Tharwani, Aged about 40 years,

Both are R/o. F-18, Minocha Colony, Bilaspur, District Bilaspur, Chhattisgarh

1c. Dr. Swati Mahobiya, W/o. Dr. Ashish Mahobiya (daughter of late Dr. Hansraj), Aged about 42 years, R/o. Rajendra Nagar, Raipur, District Raipur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, Health Department, Mantralaya, New Raipur, Police Station Rakhi, District Raipur Chhattisgarh
2. The Secretary, State Govt. of C.G. Finance Department, Ministry, New Raipur, Police Station Rakhi, Raipur Chhattisgarh
3. Divisional Sanyukta Sanchalak Kosh, Lekha and Pension, Bilaspur, Police Station City Kotwali, Bilaspur, Chhattisgarh
4. Collector, District Janjgir-Champa, Police Station Janjgir, Chhattisgarh
5. District Treasury Officer, Janjgir-Champa, Chhattisgarh Police Station Janjgir Chhattisgarh

----Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****13/08/2018**

1. The challenge in the present writ petition is to the notices (Annexure P/1 and P/1A) dated 27.12.2012. Vide the said impugned order, the respondents have issued an order whereby it has been held that the recovery of the amount of money, which the petitioner had commuted at the time of his retirement would be recovered till he attains the age

of 70, whereas when the petitioner was retired and an agreement was entered into with the petitioner, the recovery was agreed to be made till the petitioner attains the age of 70.

2. The issue involved in the instant case stands squarely covered by a recent decision of this Court in WPS No. 947/2013 decided on 25.04.2018. While deciding the said writ petition, this Court has in paragraphs No 9 to 11 held as under:-

“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.”

3. The factual matrix in the present case is not in dispute and the facts being similar to the case of “Shri Harish Chandra Shrivastava” (supra) also is not in dispute.
4. Under the circumstances, the present writ petition also deserves to be and is accordingly allowed in similar terms to the order dated 25.04.2018, passed in WPS No. 947/2013.

5. Let a copy of the order passed in WPS No. 947/2013 be made part of the record of present writ petition. As a consequence, legal heirs would be entitled for the consequential benefits, if any.

Sd/-
(P. Sam Koshy)
Judge

Ved