

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 1877 OF 2014**

• Jeevan Lal Gedam, aged about 67 years, S/o Shri Bal Govind Gedam, R/o Village & Post- Shahwada, Police Station- Charama, District North Bastar Kanker (C.G.) **... Petitioner**

versus

1. State of Chhattisgarh, through the Secretary, School Education Department, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
 2. The District Education Officer, District North Bastar Kanker (C.G.)
 3. The Joint Director, Treasury, Accounts & Pension, Bastar Division, Jagadalpur (C.G.) **... Respondents**

For Petitioner	:	Mr. D.N. Prajapati, Advocate.
For Respondents	:	Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****02/05/2018**

1. Challenge in the present writ petition is to the action on the part of the Respondents in issuing the order of recovery for an amount of Rs. 2,65,815/- from the pensionary benefits payable to the Petitioner.
2. Learned Counsel for the Petitioner submits that the impugned action on the part of the Respondents is *per se* illegal as it has been issued without any opportunity of hearing provided to the Petitioner. He further submits that the Petitioner is not responsible for any erroneous or excessive payment made by the Respondents. He also submitted that the Petitioner at no point of time has made any misrepresentation or played any fraud with the Respondents in getting the excess payment. It was next contended that the excess payment alleged to have been made also was much prior to his date of retirement. For all these reasons, he submits that the case of the Petitioner squarely falls within the directions given by the Hon'ble Supreme Court in the case of *State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.*, 2014 (8) SCC 883.

3. Learned State Counsel however tried to justified the action on the part of the Respondents submitting that the Petitioner has been paid something excess than what he was otherwise entitled for. He further submits that the Petitioner also has given an undertaking of recovering any erroneous and excess payment from any dues payable to him including gratuity and pension. He further submits that since the excess payment was detected only at the time of finalization of his pension, the respondent authorities were justified in issuing the order of recovery.

4. The fact from the record of the writ petition which has not been disputed by the other side is that impugned order has been passed without giving any opportunity of hearing to the Petitioner. Further, it has also been established that the said amount paid by the Respondents to the Petitioner was not on any misrepresentation made by the Petitioner but was on account of some mistake and error on the part of the officers of the Respondents for which the Petitioner cannot be blamed.

5. So far as the issue of recovery of excess payment made to a government employee is concerned, the matter by now stands well settled by a series of judgments of the Supreme Court starting from the case of *Sahib Ram v. State of Haryana and others* [1995 Supp. (1) SCC 18] and the latest being *State of Punjab and others etc. v. Rafiq Masih (White Washer) etc.* (2014 8 SCC 883). It is also a settled law that the State Government always has a right for recovering any amount from the employee in case the employee has been wrongly paid something in excess subject to granting opportunity of hearing to the employee and conducting an enquiry so as to ascertain the liability part. However, from the record it is evidently clear that no such efforts have been made on the part of the Respondents before issuance of order of recovery.

6. In view of the said given admitted position, the issue involved in the present case stands squarely covered by the decision of the Hon'ble Supreme Court rendered in the case of State of Punjab and Others v. Rafiq Masih (White Washer) and Others [2015 (4) SCC 334], wherein it has been held as under:

- “(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D').
- (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.”

7. Relying upon the aforesaid decision of the Supreme Court, this High Court also in some of the writ petitions, i.e., Writ Petition (S) No. 1495 of 2013 (Smt. Kunti Bai v. State of Chhattisgarh and others) decided on 10.2.2015, Writ Petition (S) No. 6664 of 2014 (Chandramani Dubey v. State of Chhattisgarh & Others) decided on 18.3.2015 and Writ Petition (S) No. 4793 of 2008 (V. V. Malaiya v. State of Chhattisgarh & Others) decided on 21.8.2015, has held that in case if any payment has been made inadvertently on the part of the department and which has been made without there being any misrepresentation or fraud played by the employee concerned, the recovery order issued by the department has been held to be illegal.

8. In view of the judicial pronouncements referred herein above and also taking into consideration the facts of the present case, particularly the contentions of the State Government in their reply, it admittedly stands

establish that excess payment made to the Petitioner was on account of mistake that occurred at the government end and that there has been no misrepresentation or fraud played by the Petitioner whatsoever, the action on the part of the Respondents in recovery of the excess payment against the Petitioner at this stage is not proper and legal.

9. Accordingly, the present writ petition is allowed and the impugned action of ordering for recovery is set aside/quashed.

10. The writ petition stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/