

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6478 of 2014**

Rameshwar Prasad Choube, aged about 67 years, S/o Late Shri Kalpa Dhari Choubey, retired Librarian of Government Rajiv Gandhi Post Graduate College, Ambikapur, R/o near old Primary School, Patpariya, Ambikapur, District Surguja (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Department of Higher Education, Mantralaya, Mahanadi Bhawan, Naya Raipur (CG)
2. Commissioner, Higher Education, Directorate of Higher Education, Raipur (CG)
3. Principal, Government Rajiv Gandhi Post Graduate College, Ambikapur, District Surguja (CG)
4. Joint Director, Treasury, Account and Pension, Ambikapur Division, District Surguja (CG)
5. Accountant General, Office of the Accountant General, Raipur (CG)

---- Respondents

For Petitioner	:	Shri Vinay Pandey, Advocate
For State	:	Shri Arvind Dubey, P.L.
For Respondent no.5	:	Shri Raj Kumar Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****30.08.2018**

Challenge in the present writ petition is to the impugned order Annexure P-5 dated 27.10.2014 whereby the respondents while releasing retiral dues of the petitioner have deducted Rs.4,55,917/- from the gratuity

amount payable to the petitioner.

2. Counsel for the petitioner submits that the petitioner had retired from service on 31.01.2009 and till that date there was no recovery or any proceeding initiated against the petitioner and subsequent to his retirement, the respondents could not have initiated recovery proceeding against the petitioner. He submits that it is a case where the retiral dues having not been released promptly made the petitioner file a writ petition i.e. WPS 902/2014. The said writ petition stood disposed of on 20.02.2014 with the following observation:

“5. The petition is accordingly disposed of in the same terms, i.e. the Office of the Advocate General is directed to send the case to the Committee within a period of 15 days from the date of receipt of a copy of this order. Thereafter, the Committee shall issue notice to the petitioner and officers concerned within a further period of 15 days. The Committee shall consider and pass order in accordance with law, after affording proper opportunity of hearing to the petitioner. The petitioner and the officers concerned may file additional documents, if necessary. The entire exercise be completed within a period of six months from the date of receipt of a copy of this order.”

3. Subsequently, the matter was seized by the High Power Committee constituted in this regard by the State Govt. and it ordered for immediately releasing the entire retiral dues to the petitioner. It is pertinent to mention at this juncture that the High Power Committee did not make any observation so far as withholding of any amount of gratuity nor was there any order passed by the Committee for recovering an amount to the extent of the loss caused to the Department by an act of the petitioner.

4. The contention of the petitioner is that in spite of there being no such

observation by the Committee the respondents have arbitrarily issued Annexure P-5 deducting an amount of Rs.4,55,917 from the gratuity amount payable to the petitioner. This according to the petitioner is without any authority and in violation of the service rules governing the service conditions of the petitioner where no order of recovery or anything could have been initiated after his retirement. Thus, prayed for quashing of the impugned order of recovery.

5. Counsel for the respondents, however, tried to justify the action on the part of the respondents by stating that while the petitioner was working as a Librarian, a large number of books were found missing and it was the cost of these books which the respondents have ordered for recovery which is well within the power of the employer for recovering any loss which has been caused to the Department.

6. Undisputedly, when the matter came up before the High Court on 20.02.2014, while disposing of WPS No. 902/2014, the respondents did not mention the fact that there was certain loss caused by the petitioner which ought to have been recovered. The matter was placed before the Committee as per the direction of this Court. Even the Committee has not expressed any opinion so far as the recovery of Rs.4,55,917 to be made from the retiral dues of the petitioner. Given the facts, the respondents now after more than three years from the date of retirement could not have issued the order of recovery.

7. For the aforesaid facts and circumstances of the case, this Court is of the opinion that the order of recovery Annexure P-5 is bad in law and is not sustainable. The said recovery is also not permissible in the light of Rule 9 (2)(b) of the CG Civil Services Pension Rule, 1976. The view of this

Court stands fortified from its earlier recent decision passed in WPS 316/2012 decided on 24.07.2018 and in WPS No. 185/2012 decided on 16.07.2012.

8. Accordingly, the impugned order Annexure P-5 stands set aside/quashed. It is directed that the respondents shall forthwith release the said amount to the petitioner within a period of 60 days from the date of receipt of certified copy of this order and the said amount shall also carry interest @ 9% per annum from the date of retirement till the date of actual payment.

**Sd/-
P. Sam Koshy
Judge**