

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 972 of 2010**

Manohar Lal Chandra S/o Shri Premlal Chandra, Aged about 62 years, Retired Forester (Van Pal), R/o Village Kusumjhar, Post Dabhra, District Janjgir Champa Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Secretary, Department of Forest, D.K.S. Bhawan, Raipur Chhattisgarh
2. The Conservator of Forest, Bilaspur Circle, Bilaspur Chhattisgarh
3. The Divisional Forest Officer, Raigarh Forest Division, Raigarh Chhattisgarh
4. The Managing Director, Zila Laghu Vanopaj Sahkari Union Maryadit, Raigarh Chhattisgarh
5. The Divisional Joint Director, Treasury, Account And Pension, Bilaspur Division, Bilaspur Chhattisgarh
6. The District Treasury Officer, Janjgir Champa, District Janjgir Champa Chhattisgarh

----Respondents

For Petitioner	:	Mr. Pawan Shrivastava, Advocate
For State	:	Mr. B. Gopa Kumar, Dy. A.G.
For Respondents No. 4 & 5	:	None

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/04/2018**

1. The challenge in the present writ petition is the orders collectively marked as Annexure P/1 dated 03.01.2009, 09.01.2009 and 31.01.2009. By the said orders, it has been ordered that there is a recovery of an amount of Rs.60,362.45 to be made from the petitioner and further vide order dated 31.01.2009, they have calculated the recovery to be made of Rs.82,093/- from the retiral dues of the petitioner.
2. The grievance of the petitioner is that the petitioner was working as a Forester (वनपाल) with the respondent No.4 and he stood retired from

service on attaining the age of superannuation on 31.08.2008. After the retirement while processing the case of payment of retiral dues, the respondents have for the first time issued Annexure P/1 dated 03.01.2009 wherein they say that there were certain payments recoverable from the petitioner to the tune of Rs.60,362/-. Subsequently, they issued another letter whereby the respondent authorities had stalled the processing of the pension of the petitioner in the light of the order dated 03.01.2009 vide order dated 09.01.2009. Later on vide another order dated 31.01.2009 the respondent No.4 assessed the recovery of the petitioner with 18% of interest on the principal amount of 60,362/- at Rs.82,093/-. It is these three orders which are under challenge in the present writ petition.

3. The petitioner by way of a document taken on record has produced a document whereby the respondent is said to have recovered an amount of Rs.1,04,205/-. The figure does not match with any of the orders of recovery, which have been issued by the respondents. For the said reason also the impugned order of recovery is not sustainable.
4. The contention of the petitioner is that the said three orders have been passed behind the back of the petitioner with no opportunity of hearing being given to the petitioner. According to the petitioner, the said order thus is in utter violation of the basic principles of natural justice. He further submits that the said order of recovery also is bad in law in the light of the judgment of the Hon'ble Supreme Court in the case of ***"State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc."*** reported in ***2015 AIR SCW 501*** and thus

prayed for the writ petition to be allowed.

5. There is no representation on behalf of the contesting respondents i.e. the respondent No.4 under whom the petitioner was serving.
6. From the perusal of the record particularly the pleadings with the writ petition and the documents enclosed along with it and also on perusal of the reply of the respondents, what clearly reflects is that before issuance of the order of recovery, no inquiry whatsoever was conducted, neither does it reflect that any opportunity of hearing or a show cause notice was issued to the petitioner before issuance of the three orders under challenge. What also is reflected from the documents enclosed with the writ petition is an order dated 01.09.2008, whereby No-dues certificate was already issued by the employer i.e. the respondent No.4 in favour of the petitioner.
7. Given the aforesaid facts and circumstances of the case this Court is of the opinion that the orders of recovery have been passed without affording any opportunity of hearing to the petitioner. So far as recovery from the retiral dues are concerned, it is well established that before issuance of any order of recovery, there has to be an opportunity of hearing to be provided to the concerned employee.
8. The law in this regard has by now well settled starting from the judgment of Hon'ble Supreme Court in the case of "**Sahib Ram vs. The State of Haryana and Others**" reported in **1995 SCC Supl. (1) 18** up till the land mark judgment of the Hon'ble Supreme Court in the case of "**Rafiq Masih**" (supra), wherein it has been held that recovery proceedings under the said circumstances is not sustainable. Moreover, what also cannot be brushed aside is that the

petitioner in the instant case was a low paid employee as he was a Forester working under the respondent No.4 and since the order of recovery has been for the first time issued after the retirement is concerned, the same would also be impermissible under law as has been held by the Hon'ble Supreme Court in the case of "**Rafiq Masih**" (supra).

9. Given the aforesaid facts and circumstances of the case, the three orders dated 03.01.2009, 09.01.2009 and 31.01.2009 collectively marked as Annexure P/1 deserves to be and is accordingly set-aside. The amount, which has been recovered is liable to be refunded back to the petitioner forthwith along with interest @ 10% per annum from the date the recovery has been made.
10. It shall be open for the respondents to initiate recovery proceedings against the petitioner only after giving an opportunity of hearing to the petitioner.
11. The writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved