

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3948 of 2011**

Shankar Lal Ucharya S/o late Shri Ram Dayal Ucharya, aged about 64 years, occupation retired Executive Engineering, R/o Madhav Ganj, Kamtipura, Lashkar Gwalior (MP)

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Water Resources Department, DKS Building Raipur, District Raipur, Chhattisgarh
2. Chief Engineer, Mahanadi Project, Raipur, District Raipur, Chhattisgarh
3. Superintending Engineer Water Resources Department, Electrical/Mechanical Division, Civil Line Raipur, District Raipur

---- Respondents

For Petitioners	:	Shri Awadh Tripathi, Advocate
For State	:	Shri Ratan Pusty, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****29.08.2018**

Challenge in the present writ petition is to the order Annexure P-1 whereby the respondents have issued an order of recovery of Rs.99,750/-.

2. It is a case where the petitioner working as an executive engineer stood retired from service on 21.08.2007. Subsequently, no dues certificate was also issued in favour of the petitioner on 04.01.2008. According to the counsel for the petitioner, he has also been released with all retiral dues payable to him. Abruptly, after more than three years from the date of

retirement the impugned order dated 03.12.2010 was issued whereby a recovery to the tune of Rs.99,750/- has been imposed upon the petitioner and an amount of Rs. 5,250/- has been imposed upon one P. L. Sharma the Senior Accounts Clerk.

3. Contention of the counsel for the petitioner is that the only allegation against the petitioner is that of returning of Fixed Deposits submitted deposited as security amount by a tenderer M/s Deepak Traders, Raipur which otherwise was not supposed to be refunded for the reason that there was no agreement entered into with the said Tenderer. Counsel for the petitioner submits that it is a case where the show cause notice was issued to the petitioner to which he categorically replied and denied the allegations levelled and further made a categorical statement that the entire note sheet and the paper work has been done by the Senior Accounts Clerk namely P. L. Sharma and the petitioner had merely put his signature being the Executive Engineer under the bonafide belief that Shri P. L. Sharma has properly verified the rule position as also the relevant documents before obtaining permission from the petitioner for releasing the fixed deposit which was lying with the Department as security deposit. According to the counsel for the petitioner, the respondents without any proper assessment has straightaway assessed 95% of liability against the petitioner and only 5% has been saddled upon Shri P. L. Sharma. According to the petitioner, this apportionment is without any basis and without proper assessment as to whether it was the P. L. Sharma the Senior Account Clerk who was prima facie responsible for commission of the said irregularity. The authority concerned should have conducted an enquiry in this regard and thereafter should have proceeded further after giving due opportunity of

hearing to the petitioner to prove his case. Moreover counsel for the petitioner submits that the order or recovery as such is bad in law for the reason that it has been raised at a belated stage and the petitioner has already been retired, the impugned order could not have been raised after more than 3 years from the date of retirement.

4. State counsel on the contrary opposing the petition submits that it is a case where the petitioner has been given a show cause notice and he has given an explanation and from his explanation it clearly reflects that there is a sort of admission on his part of having put his signature for the purpose of releasing the fixed deposit to M/s Deepak Traders. According to the State counsel, it was a case where the petitioner in fact had to forfeit the said amount in the light of the condition attached to the tender documents, having not done so the State has been put to loss and therefore the impugned order cannot be said to be bad in law arbitrary or illegal and the petition itself deserves to be rejected.

5. Having heard the contentions put forth on either side and on perusal of record what is undisputed is the fact that the petitioner stood retired as an Executive Engineer on 21.08.2007. After the petitioner has retired, the respondents issued a show cause notice alleging certain irregularities committed by the petitioner while he was in service. The petitioner replied to the show cause notice categorically denying the allegations and further attributing the illegalities upon the Senior Accounts Clerk namely Shri P. L. Sharma. After the petitioner having filed the reply, the respondents should have taken into consideration the aspect as to what is the role played by the petitioner and what is the role played by the said P.L. Sharma and to what extent each of them were responsible for. Having not done so the finding

of the respondents holding the said P.L. Sharma liable to the extent of 5% appears to be without any basis and without any proper assessment or quantification and the same therefore deserves to be and is set aside, reserving the right of the State Govt. to pass a fresh order after giving due opportunity of hearing to the petitioner and while doing so, the respondents shall also decide as to what extent and how the petitioner as well as Shri P. L. Sharma the Senior Accounts Clerk were involved in the said irregularity if any and thereafter decide the apportionment of recovery to be made from each of them.

6. With the aforesaid observation, the writ petition stands allowed.

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