

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 398 of 2014**

Deendayal Hanumanta S/o Hemram Hanumanta, aged about 59 years, (Removed from service), Assistant Development Extension Officer, Janpad Panchayat, Arang, R/o Village Mungesar, PS Mandir Hasaud, Distt Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of Panchayat and Rural Development, DKS Bhawan, Raipur, Distt Raipur, Chhattisgarh
2. Chief Executive Officer, Janpad Panchayat Arang, Distt Raipur, Chhattisgarh
3. Chief Executive Officer, Zila Panchayat, Raipur, Distt Raipur, Chhattisgarh
4. Tahsildar Mandir Hasaud, Distt Raipur, Chhattisgarh

---- Respondents

For Petitioner : Shri C. R. Sahu, Advocate

For Respondents 1 & 4 : Shri Chandresh Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

03/08/2018

The challenge in the present writ petition is to the order of recovery dated 15.07.2013 Annexure P-1 to the tune of Rs.4,32,543/- from the petitioner.

2. The said payment was on account of subsistence allowance which has been erroneously paid to the petitioner in spite of the fact that the services of the petitioner stood terminated vide order dated 13.08.2008.

3. The admitted fact in the instant case is that the petitioner was prosecuted under the provisions of Prevention of Corruption Act. He was convicted in the said case vide judgment dated 27.03.2008 passed by the Special Judge, PC Act in Special Criminal Case No. 05 of 2006. By virtue of his being prosecuted for the offence under the PC Act, services of the petitioner were placed under suspension on 27.09.2006. Meanwhile, in the light of the conviction of the petitioner his services stood terminated w.e.f. 13.08.2008. Though the services of the petitioner stood terminated but he was erroneously granted subsistence allowance even after termination till the impugned order Annexure P-1 was passed.

4. Counsel for the petitioner submits that the impugned order of recovery is bad in law to the extent that the subsistence allowance which has been paid to the petitioner was not by way of any fault on his part or for any misrepresentation that he has made. He submits that the petitioner by efflux of time has crossed the age of superannuation and therefore, the recovery would be putting the petitioner to face great financial hardship and the same is bad in law.

5. State counsel, however, opposing the petition submits that the petitioner admittedly has received something which he is not otherwise legally entitled for and that beyond the order of termination, the petitioner would not under any circumstances be entitled for subsistence allowance. If any erroneous payment has been made to him, the petitioner is bound to repay/refund the same to the department and that is all that the respondents have sought for vide Annexure P-1.

6. Having heard the counsel for the parties and on perusal of the record, apparently an erroneous payment has been made to the

petitioner on account of the error at the hands of the officers of the respondents. It is not the case of the respondents that the petitioner has made any misrepresentation or has played fraud for obtaining the said subsistence allowance. In the absence of any role played by the petitioner for erroneous excess payment that he has received, he cannot be subjected to recovery of an huge amount at this stage of his life. Moreover, whatever subsistence allowance has been paid to the petitioner, must have already been used by the petitioner for sustaining himself during this period. Thus, it would not be justified at this juncture for proceeding to recover a lump sum amount of rupees 4 ½ lakhs vide the impugned order against the petitioner.

7. For the aforesaid reasons, this Court is of the opinion that the rectification part as regards the erroneous subsistence allowance being paid can be carried out to the extent of stopping any further payment of subsistence allowance to the petitioner. However, the amount which has already been released to the petitioner and which has been consumed or used by the petitioner, the same would be impermissible under law for recovery.

8. Thus, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge