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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4790 of 2014

1. Maharathi, S/o Shiv Charan, Aged About 58 Years R/o Village Chhinddant, P.S. Charcha Colliery, Civil And Revenue Distt. Koriya C.G.

---- Petitioner

Versus

1. South Eastern Coalfields Limited And Ors. S/o Through Its Chief Managing Director, Seepath Road, P.B. Bo. 60, Bilapsur Distt. Bilaspur C.G.
2. The Sub Area Manager Charcha West, South Eastern Coalfield Ltd. Baikunthpur, Distt. Koriya C.G.
3. The Regional Commissioner Office Of The Regional Commissioner Coal Mines Provident Found Organization Shanti Nagar, Gupteshwar, Jabalpur M.P.

---- Respondents

For Petitioner	:	Mr. Govind Dewangan, Advocate
For Respondents	:	Mr. Akash Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12.07.2019

1. The relief sought for by the petitioner in the present Writ Petition is for a direction to the respondents for refund/return of an amount of Rs. 3,79,200/- illegally withdrawn by one Shri Santosh Kumar Shrivastava from the C.M.P.F. Account of the petitioner with interest.

2. The facts of the case is that, the petitioner was an employee of the Respondent No. 1 and 2 working on the post of category- V (Filter Plant Attendant) at the Charcha East Colliery, District: Koriya, (C.G.). The petitioner was as such an employee of the Respondent

No. 1 company which is a subsidiary company of Coal India Limited. The employee working in the coal mines i.e., under the Coal India Limited and its subsidiary company avail the benefit of Provident Fund as maintained by the Coal Mines Provident Fund Organization, which in the instant case is Respondent No. 03. The petitioner stood retired from service in the year 2016.

3. Before his retirement in the year 2012, when the petitioner approached the local branch office of the Respondent No. 03 to know the balance in his C.M.P.F. Account, the petitioner found that the balance shown was much less than what it represented/reflected in the previous years. On verification, it was found that in the year 2008 on account of claim for House Building Advance Loan amounting to Rs. 3,79,200/- was withdrawn from his C.M.P.F. Account. However, the petitioner had never applied for any such loan from the C.M.P.F Department. The petitioner immediately filed a complaint in this regard to the Respondent No. 01 and 02 and the matter was thereafter enquired called upon, during the course of enquiry and investigation, it has been found that another employee working under the Respondent No. 01 and 02, namely Shri Santosh Kumar Shrivastava had illegally by using forge signatures and documents of the petitioner had fraudulently applied for House Building Advance and obtained loan from the C.M.P.F. Account of the petitioner to the tune of Rs. 3,79,200/-.

4. From the reply of the Respondent No. 01 and 02, it reveals that the respondents had immediately prosecuted the said Santosh Kumar Shrivastava on the administrative side and after the departmental

enquiry, he has been terminated from service. The grievance of the petitioner is that, the said amount of Rs. 3,79,200/- has till date not been returned back to the petitioner by the respondents. He further submits that now he has retired from service over three years, the said amount is badly required for him.

5. The Respondent No. 01 and 02 had entered their appearance and have filed reply, in their reply they have categorically held that the Respondent No. 01 and 02 are not responsible for the claim that has been used by the petitioner and it is outside the jurisdiction of authority of the Respondent No. 1 and 2 to compensate. It has further been intimated to the Respondent No. 01 and 02 that on the administrative side they have already taken a decision and terminated the employee/officer who had done the fraudulent act.

6. The Respondent No. 03 inspite of service of notice has not entered appearance either personally or through the lawyer. Since, the responsibility of maintaining the Provident Fund Account rests exclusively with the Respondent No. 03, any loss caused to the petitioner from the account maintained by the Respondent No. 03. It would be they alone, who would be responsible for the same. For an act of misconduct or fraud played by a third party, if some loss has been caused to the employee of the Respondents, he should not be let to suffer for the same. The respondents should have taken all necessary steps ensuring that the amount is deposited back in the account of the petitioner promptly and thereafter, the department should have ensured the amount is recovered from the **third** employee or officer, the petitioner as such cannot be forged to

initiate recovery proceedings against the persons who have committed fraud.

7. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that taking into consideration the fact that, the petitioner admittedly has been put to loss of amount of Rs. 3,79,200/-. It is directed that the Respondent No. 03 shall ensure that the said amount be returned back to the petitioner with interest from the date, the amount stands withdrawn from the account of the petitioner till the amount is actually released.

8. The Writ Petition, accordingly stands allowed. It is expected that the Respondent No. 03 shall comply with the Order at the earliest, preferably within a period of 90 days and it is also ordered that the respondents would be at liberty to initiate appropriate steps for recovering the same from the concerned employee, who has played/committed fraud with the department.

Sd/-
(P. Sam Koshy)
Judge