

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 563 OF 2019**

Ishwar Lal Dewangan S/o Late Shri Kamta Prasad Aged About 65 Years
R/o 43 Kali Mai Ward, Kali Mandir Road, Tahsil Mungeli, Police Station
Mungeli, District Mungeli Chhattisgarh.

...Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Agriculture, Mahanadi Bhawan, Mantralaya, New Raipur, Police Station Rakhi, District Raipur Chhattisgarh.
2. The Chief General Manager Chhattisgarh Rajya Krishi Vipnan Board, Beej Bhawan, Telibandha, Raipur, District Raipur Chhattisgarh.
3. The Accounts Officer Chhattisgarh Rajya Krishi Vipnan Board, Beej Bhawan, Telibandha, Raipur, District Raipur Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Prateek Sharma, Advocate.
For Respondent No.2&3	:	Shri Animesh Tiwari, Advocate.
For State	:	Ms. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****28.01.2019**

1. The challenge in the present writ petition is to the order Annexure P/1, dated 12.10.2015 whereby the respondents have taken two decisions, firstly in reducing the pension payable to the petitioner from from Rs.8,110 to Rs.7,875/-. So far as the second part is concerned, the same is in respect of recovery of an amount of 58,145/- from the petitioner on account of the certain erroneous pay fixation. It also reveals that the said amount of Rs.58,145/- has already been recovered from the gratuity amount payable to the petitioner.
2. According to the petitioner, so far as the reduction in the pension is concerned, he has not been provided sufficient opportunity of defence before the pension has been reduced. He further submits

that since opportunity of hearing has not been provided, it amounts to violation of principles of natural justice . According to the petitioner even if it is for rectification or reduction in the pension, even then the authorities should have taken the petitioner into confidence. So far as the recovery part is concerned, the Counsel of the Petitioner submits that the said act is impermissible in the light of the judgment of the Supreme Court in the case of State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334. It was further contention of the petitioner that the petitioner is a Class-III post holder and the action of recovery has been initiated subsequent to his superannuation which also would make the recovery impermissible.

3. The stand of the respondent at this juncture is that it is only after retirement of the petitioner when the pension was being settled it was detected of a wrong fixation of pay made to the petitioner and the reduction in the pension has arisen only on account of the said wrong fixation. According to the counsel for the respondents, the department always has a right for rectification of an error and it is this rectification that has been carried out resulting in the reduction of pension is concerned.
4. So far as recovery part is concerned, the counsel for the respondents submits that since the petitioner has been paid something excess than what he was otherwise entitled for, the decision to recover the same cannot be said to be bad in law and thus prayed for rejection of the petition.
5. Having heard the contentions put forth on either side and on perusal of records prima facie it reflects that before reduction of his pension

the authorities have not given any opportunity of hearing to the petitioner.

6. Be that as it may, the respondents are directed to call upon the petitioner giving him a personal hearing and provide him necessary details so far as rectification part is concerned and subsequently bring it to the notice of the petitioner as to on which date the error crept and to what extent, and thereafter the authorities may pass a fresh order so far as the fixation of pension is concerned.
7. So far as recovery part is concerned, the said issue stands no longer res-integra for the reason that the Supreme Court in the case of Rafiq Masih (Supra) has very categorically envisaged certain situations where the recovery have been held to be impermissible under law. Some of the situations are produced herein:
 - (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
 - (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
 - (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
 - (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
 - (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

8. Plain reading of the facts of the case would clearly reveal that the case of the petitioner attracts all the situations so envisaged by the Supreme Court.
9. In view of the same, this court has no hesitation in reaching to the conclusion that the recovery made by the department to the tune of Rs.58,145/- is apparently bad in law and the same deserves to be and is set aside/quashed. The respondents are directed to forthwith release the recovered amount to the petitioner within a period of 60 days from the date of receipt of the copy of this order.
10. So far as the reduction of pension is concerned, the same shall be finalized after the scrutiny of the same by the department taking the petitioner into confidence. The same be also completed within a period of 60 days.
11. The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge