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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6149 of 2009**

Ashok Kumar Dubey S/o late Shri Devdatt Dubey, Reader, Civil Engineering, Government Engineering College, Raipur (CG), R/o B-13, Gayatri Nagar, Raipur (CG)

---- Petitioner**Versus**

1. Union of India, through Secretary, Ministry of Human Resources & Development, Shastri Bhawan, New Delhi
2. State of Chhattisgarh through Secretary, Department of Technical Education, Science & Technology, Manpower Planning, Mantralaya, DKS Bhawan, Raipur (CG)
3. Dr. Smt. Shashi Krishna Pandey W/o Dr. K. S. Pandey, Director, National Institute of Technology, G.E. Road, Raipur (CG)
4. National Institute of Technology, G.E. Road, Raipur (CG) through its Registrar

---- Respondents

For Petitioner	:	Mr. N. K. Vyas, Advocate
For Respondent no.2	:	Mr. Somkant Verma, P.L.
For Respondent nos. 3 & 4	:	Mr. Sharad Mishra under instruction of Mr. S. S. Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****25.02.2020**

1. The challenge in the present writ petition is to the order Annexure P-1 dated 02.03.2009 passed by the respondent no.4 whereby the petitioner has been requested to refund an amount of Rs.2,47,860/- which the petitioner had received in excess towards Testing and Consultancy

charges.

2. The brief facts relevant for disposal of the present writ petition are that the petitioner herein is a Reader in the respondent no.4 institution. As per the circulars of the State Govt., the petitioner and similarly placed persons in the respondent no.4 were paid Testing and Consultancy charges for the projects of the State Govt. where the respondent no.4 was involved in the Consultancy & Testing. Testing and Consultancy charges were fixed at 50% of the basic pay plus D.A. of which 50% amount was to be deposited in the Institution and the balance of 50% was to be paid to the concerned faculty who had performed the testing and provided consultancy.
3. The State Govt. in between vide order dated 30.11.2002 which is part of Annexure P-12 had waived the ceiling of 50% of the basic plus DA so far as receiving the Testing and Consultancy charges are concerned for a period of one year. In the process, the entire Testing and Consultancy charges were being paid to the concerned faculty. The petitioner continued to receive the said benefit even beyond the period of one year from 30.11.2002 whereas the order dated 30.11.2002 was in operation only for a period of one year. That thereafter it has neither been extended nor has any fresh order been passed for the continuity of the said benefit. It is the said intervening period that the petitioner had received certain amount in excess of 50% which he was otherwise not entitled for except for the period between 30.11.2002 to 30.11.2003 i.e. the period during which the State Govt. had waived the condition of payment of 50% of the Testing and Consultancy charges.
4. Admittedly, the petitioner in the instant writ petition had for the period

between 2006 to 2008 received certain benefits over and above the 50% ceiling. Undisputedly, the order dated 30.11.2002 has not been further renewed nor a fresh order has been passed by the respondents for continuity of the said benefit.

5. Thus, the benefit arising out of the order dated 30.11.2002 would be confined for a period of one year alone which automatically lapses on 30.11.2003 and not beyond that. Beyond 30.11.2003, there is no document produced by the petitioner in the writ petition with which it can be substantiated that the petitioner would be entitled for an amount over and above 50%. In view of there being no order of the State Govt. either renewing the order dated 30.11.2002 or continuing the said benefit beyond that, this Court is of the opinion that the claim of the petitioner beyond 30.11.2003 would not be sustainable.
6. In view of the same, the excess amount that the petitioner has received inadvertently or erroneously, has to be refunded to the Department. By virtue of the order passed by this Court on 29.06.2010, the petitioner has already deposited the entire amount of Rs.2,46,860/- with the Department.
7. At this juncture, counsel for the petitioner submits that from 01.01.2006 the salary structure of the petitioner stood revised by virtue of the revision of pay and in the process the basic salary of the petitioner itself had been revised and enhanced substantially. Accordingly, from 01.01.2006 onwards the petitioner would have been entitled for Testing and Consultancy charges at a higher rate than at the rate the amount has been calculated and paid to the petitioner.
8. Given the said fact, the amount of Rs.2,47,860/- which the petitioner is

alleged to have received in excess, would have to be adjusted in terms of the revision of pay that took place. According to the petitioner, as per his calculation, the excess amount now would come to Rs.1,71,973/- instead of Rs. 2,47,860/-. Thus, there is a difference of Rs.75,887/- which the petitioner should be refunded.

9. From the pleadings available in the record, an affidavit of one Shri P. Y. Dhekne, the Registrar of the respondent no.4 Institute would show that they have accepted the contention of the petitioner in this regard and have also accepted the calculation made by the petitioner in this regard.
10. Given the said facts, this Court has no hesitation in reaching to the conclusion that the writ petition challenging the impugned order so far as the demand of recovery of Rs. 2,47,860/- is concerned does not have much merit and the said relief stands rejected.
11. However, so far as the calculation of the excess amount paid to the petitioner is concerned, as per the affidavit of the petitioner dated 25.07.2018 and the affidavit of the Officer of the respondent no.4 Department dated 23.08.2018, the calculation of Rs.2,47,860/- seems to be incorrect and in fact it actually would now be Rs.1,71,973/-.
12. Thus, the respondent no.4 is directed to refund an amount of Rs.75,887/- to the petitioner forthwith preferably within a period of 3 months from the date of receipt of copy of this order failing which the amount shall carry interest @ 6% per annum from the date the amount was deposited with the respondent no.4 till the actual payment is made.
13. The writ petition accordingly stands partly allowed.

Sd/-
P. Sam Koshy
Judge