

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5474 of 2020**

Gyaneshwar Prasad Upadhyay S/o Shri Sundardhan Prasad Upadhyay
Aged About 53 Years Occupation Lecturer Government Multipurpose
Higher Secondary School Bilaspur District Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Department Of School Education ,
Mahanadi Bhawan, Atal Nagar New Raipur Chhattisgarh.
2. The Director Public Instructions Chhattisgarh Indrawati Bhawan
Atal Nagar New Raipur Chhattisgarh.
3. The District Education Officer Bilaspur District Bilaspur
Chhattisgarh.
4. The Joint Director Treasury Account And Pensions Bilaspur
Chhattisgarh.
5. The Principal Government Multipurpose Higher Secondary School
Bilaspur District Bilaspur Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Ashwani Shukla, Advocate
For State	:	Mr. Amit Buxy, Panel Lawyer

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

19/01/2021

1. The grievance of the petitioner in the present writ petition is the notice of recovery issued by the respondents for an amount of Rs.1,74,355/- from the salary of the petitioner. The said recovery is said to have been made on account of certain excess amount paid to the petitioner on account of an alleged erroneous fixation of pay.
2. At the outset, the counsel for the petitioner submits that the petitioner has in fact never received any erroneous payment as alleged by the Department. He further submits that even the salary which is said to have been paid to the petitioner was not that which

has been paid to the petitioner as would be evident from the pay-slip which was issued to the petitioner from time to time. According to the petitioner before issuance of the order of recovery the petitioner himself has not been personally taken into confidence in as much as no show cause notice or an inquiry in this regard has been conducted by the respondent authorities. He further states that the respondent authorities ought to have called upon the petitioner to give his explanation as regards any alleged excess payment if at all received by the petitioner.

3. The State counsel on the other hand opposes the petition submits that it is a case where from the records it appears that the petitioner has been paid certain excess amount on account of the erroneous fixation of pay given to him and since the petitioner is still in service, the Department should have called upon the petitioner to deposit the same and thus it cannot be said to be bad.
4. All said and done, the petitioner is still working with the respondents and has not a considerable period of service left with the Department. If at all if the Department found that the petitioner has been paid anything in excess other than what he is entitled for under the service Rules, the leave that was expected from the respondent authorities was to call upon the petitioner to explain as to why the said amount should not be recovered and also to ascertain whether in fact any erroneous payment has been made to the petitioner or not. The Department should have conducted a physical verification/inquiry of the actual amount paid to the petitioner and also should have taken the petitioner lieu on this

aspect and thereafter then should have passed an appropriate order of recovery if at all, if any excess payment would still found paid to the petitioner. Such an exercise does not seem to have been taken by the respondents before issuance of the order of recovery. Under the circumstances the order of recovery issued by the respondents per se is bad in law as it is in total violation to the basic principles of natural justice. The matter therefore at this juncture stands remitted back to the respondents No.3 to 5 to verify the actual salary payable to the petitioner and what has in fact being paid to him. The respondents No.3 to 5 shall also call upon the petitioner in the course of physical verification and inquiry in respect of the alleged excess payment and thereafter an appropriate decision be passed at the earliest preferably within a period of 90 days from the date of receipt of the copy of this order. Meanwhile, the impugned notice of recovery shall not be acted upon by the respondents-State till a decision is passed by the respondents No.3 to 5.

5. The writ petition accordingly stands partly allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved