

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 1240 of 2010

Surendra Behera

.....

Petitioner

Mr. B. Dash, Advocate

Vs.

State of Odisha and others

.....

Opposite parties

Mr. S.S. Kanungo, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

17.10.2022

Order No.

02

This matter is taken up through hybrid mode.

2. Heard Mr. B. Dash, learned counsel for the petitioner and Mr. S.S. Kanungo, learned Additional Government Advocate for the State.

3. The petitioner has filed this writ petition seeking to quash the impugned orders of recovery made under Annexures-5 and 6.

4. Mr. B. Dash, learned counsel appearing for the petitioner contended that other similar batch of cases, i.e. O.A. No. 694 (C) of 2011 and others have been disposed of by the tribunal vide order dated 11.04.2012 relying on the judgment of the apex Court in the case of *Shyam Babu Varma v. Union of India*, 1994 (2) SCC 521 and *S.A. Quadir v. State of Bihar*, 2009 (1) Supreme-163, by quashing the order of recovery of such amount. Accordingly, he contended that in view of such position the impugned orders for recovery should be quashed.

5. Mr. S.S. Kanungo, learned Additional Government Advocate does not dispute such position.

6. In view of the above fact and circumstances and since the petitioner has neither resorted to any fraud or misrepresentation in claiming such

additional salary from 01.03.2009 and such additional salary has inadvertently been allowed by the authorities which has thereafter been continued by virtue of interim orders of the tribunal, the petitioner shall not be liable for refunding such extra amount drawn as it is likely to cause undue hardship as settled by the apex Court in the case of ***Shyam Babu Varma v. Union of India***, 1994 (2) SCC 521 and ***S.A. Quadir v. State of Bihar***, 2009 (1) Supreme-163 and as such, the order impugned under Annexures-5 and 6 are hereby quashed and the writ petition stands disposed in terms of the order dated 11.04.2012 passed in O.A. No. 694 (C) of 2011 and the order be implemented within a period of four weeks from the date of communication of the order.

Arun

(DR. B.R. SARANGI, J.)

