IN THE HIGH COURT OF ORISSA AT CUTTACK

<u>WPC (OA) No. 1677 of 2017</u>

Baidyanath Mahanandia	…..	***Petitioner***
		Mr. K.C. Sahu, Advocate
	Vs.	
State of Odisha and others	…..	***Opposite parties***
		Mr. A.K. Mishra, AGA.

CORAM:
DR. JUSTICE B.R. SARANGI

<u>ORDER</u>
30.08.2022

<u>Order No.</u> 01

This matter is taken up through hybrid mode.

2. Heard Mr. K.C. Sahu, learned Counsel for the Petitioner and Mr. A.K. Mishra, learned Additional Government Advocate for the State.

3. The Petitioner has filed this Writ Petition seeking to quash the order under Annexure-5 issued by the Farm Superintendent, Palijhar Farm, whereby it was stated that the vouchers submitted by the Petitioner cannot be accepted and also the consequential order dated 20.07.2017 under Annexure-6 passed by the District Agriculture Officer, Kandhamal directing the Petitioner to submit the compliance report before his retirement, otherwise the outstanding amount of Rs.4,19,822/- will be attached in his DCRG for taking further action by the Director of Agriculture and Food Production, Odisha.

4. Mr. K.C. Sahu, learned Counsel for the Petitioner contended that the Petitioner is not liable to pay the amount as indicated in the orders under Annexure-5 and 6 and, therefore, the direction so made cannot sustainable and accordingly seeks for quashing of the orders

under Annexures-5 and 6. In order to substantiate his case, he relied on the judgment of the this Court in the case of ***Sri Khageswar Nayak v. State of Orissa and others***, 2004 (II) OLR 210 and ***Indramani Pradhan v. State of Orissa and others***, 2021 (Supp.) OLR 981.

5. Mr. A.K. Mishra, learned Additional Government Advocate contended that during the incumbency period from 12.09.2001 to 31.12.2003 at Pilijhar Farm had taken a loan advance of Rs.4,19,822/-. But he had submitted the voucher for an amount of Rs.3,43,140/-, which does not solve the purpose, therefore, he might have been refunded the rest unspent amount of Rs.76.682/- to the office at the time of submission of vouchers. But the Petitioner remained silent in the matter though a period of more than 15 years had been passed in the meantime. Therefore, he has been called upon to furnish fresh voucher, which he did not comply, therefore, steps have been taken for recovery of amount of Rs.4,19,822/- from the DCRG, which he is entitled to after retirement and, thereby no illegality and irregularity have been committed by the authorities while passing the orders under Annexure-5 and 6.

6. Having heard learned Counsel for the parties and after going through the records, admittedly when the Petitioner was rendering his service as AO in the Office of the Farm Superintendent, Pilijhar Farm, he had taken a loan advance of Rs.4,19,822/-. He had submitted the voucher for an amount of Rs.3,43,140/-, but so far as the outstanding amount of Rs.76.682/- no voucher was produced. Therefore, during the internal audit it was objected that the vouchers are not in proper form and had not been submitted with due procedure to the advance granted amounting to Rs.4,19,822/- but

instead of fixing the liability on the petitioner, direction had been given for recovery of the amount. Fact remains, such recovery without following due procedure of law is contrary to the Finance Department Office Memorandum dated 04.03.2003 wherein it has been indicated as follows:-

> "Where the loss of Government money either by misappropriation or otherwise as pointed out by the audit is of a nature where no direct responsibility can be fixed without resorting to a fact finding enquiry, in such cases Department proceeding should be instituted under O.C.S. (C.C. & A) Rules, 1962/ O.C.S. (Pension) Rules, 1992 on the basis of the audit para/ report.

7. In ***Sri Khageswar Nayak*** (supra), this Court, relying on the judgment of the apex Court in D***.V. Kapoor v. Union of India***, AIR 1990 SC 1923, held that in absence of initiation of any proceeding against the delinquent officer for his misconduct or negligence in duty and in absence of such finding no amount from the pension or gratuity of the employee could be withheld.

8. In ***Indramani Pradhan*** (supra), this Court observed that unless a proceeding involved to assess such recovery is initiated and there is determination of such recovery, there is no justified reason to withhold the arrear, retiral dues and final pension of the petitioner. To come to such a finding, this Court had relied on the judgments in the case of ***Narayan Mishra v. Sundrenath Das***, AIR 1972 Ori 115 and in the case of ***New Central Jute Mills Co. Ltd v. The Assistant Collector of Central Excise, Allahabad***, 1971 Air 454.

9. Therefore, keeping in view of the Office Memorandum of the Finance Department as mentioned above and the judgment of this Court as well as apex Court, this Court is of the considered view that

without fixing the responsibility and without resorting to a fact finding inquiry by initiating departmental proceeding against the petitioner under OCS (CCA) Rules, 1962/ OCS (Pension Rules) 1992, if direction was given for recovery of the amount from the DCRG on the basis of the audit para/ report, the same cannot be sustained in the eye of law. Accordingly the orders under Annexures-5 and 6 dated 17.07.2017 and 20.07.2017 cannot sustain is the eye of law and hereby quashed. However, the opposite parties are directed to take appropriate steps in accordance with law for recovery of the loss sustained to the government, by following due procedure of law.

10. With that above observation/direction, the Writ Petition stands disposed of.

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