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**(2020) 01 JH CK 0142**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (S).No. 3015 Of 2016**

Banshidhar Dubey

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

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**Date of Decision :** 13-01-2020

**Acts Referred:**

**Citation :** (2020) 01 JH CK 0142

**Hon'ble Judges :** Dr. S.N. Pathak, J

**Bench :** Single Bench

**Advocate :** Praful Jojo, Shadab Bin Haque, Suresh Kumar

**Final Decision :** Allowed

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## Judgement

1. Heard the parties.

2. Petitioner has approached this Court with a prayer for direction to the respondents to immediately and forthwith refund the amount of Rs.1,46,421/-, which has been illegally deducted from the leave salary of the petitioner. Further prayer has been made to pay the arrears of salary w.e.f. 19.04.2006 and also to extend the benefits of 2nd ACP with interest.

3. Case of the petitioner lies in a narrow compass. Petitioner was appointed and joined as graduate trained teacher on 19.04.1982 under the Welfare

Department and superannuated on 31.07.2009 from Tribal Girls High School, Chapatoli, Gumla. Petitioner was granted the benefits of ACP w.e.f.

09.08.1999 in the scale of Rs.7000-12000 vide memo No. 542 dated 09.03.2007. Further, petitioner was granted the benefits of 2nd ACP and also

granted promotion in the scale of Rs.7500-12000/- and his pay was fixed at Rs.8750/- and thereafter, promotion was also confirmed w.e.f.

28.04.2008. After rendering a long satisfactory period of services, the petitioner

superannuated from services w.e.f. 31.07.2009. It is the specific case of the petitioner that pay-scale fixed at Rs.7500-12000 was reduced to Rs.6500-10500, without any show-cause and without any proceedings. In the entire service career never any misrepresentation was made for getting the said pay-scale, neither any fraud was played by him. It was the respondent-authorities, who had fixed that pay-scale and as per his entitlement, petitioner was getting the said pay-scale and there was no any illegality for fixation of the said pay-scale. Aggrieved by illegal and arbitrary deduction, the petitioner has knocked the door of this Court.

4. Mr. Praful Jojo, learned counsel appearing for the petitioner strenuously urges that petitioner is entitled for the said amount which has been illegally recovered by the respondent-authorities. Mr. Jojo further argues that the respondents while issuing the impugned order have violated the principles of natural justice, inasmuch as, without affording any opportunity of hearing and without issuance of any show-cause notice, the said order has been passed, which is not tenable in the eyes of law.

5. Per contra, counter-affidavit has been filed. Mr. Shadab Bin Haque, learned counsel appearing for the respondent-State draws the attention of the Court towards supplementary counter-affidavit and submits that as per letter No. 1610 dated 23.06.2009, the excess amount of Rs.1,46,421/- paid to the petitioner, was recovered after his retirement, without issuing any show-cause because as a self-drawing and disbursing officer, petitioner himself was the authority to recover the amount paid in excess to him and as such, there is no illegality in the impugned order. Respondents are justified in recovering the amount which was illegally received by the petitioner, as he was the drawing and disbursing officer.

6. Be that as it may, having gone through the rival submissions of the parties and upon perusal of the records, this Court is of the considered view that order of recovery is not tenable in the eyes of law for the following facts and reasons:

(I) Before issuance of order of recovery, no show-cause notice was issued to the petitioner.

(II) It is settled principle of law that whenever any amount has to be recovered which bears a civil consequences, the employee concerned is entitled for hearing. Admittedly, in the instant case, no opportunity of hearing was

afforded to the petitioner. There is violation of cardinal principle of natural justice.

(III) Law is well settled that after retirement, no recovery can be made without following or adhering to the rules made for recovery. Nothing has been brought on record to show that after retirement, the respondents have followed the rules of recovery or pension rules. Admittedly, the amount has been recovered without adhering to the rules of pension and also without following the principles of natural justice.

7. From the above observation, it is clear that the recovery part is not tenable in the eyes of law since due process was not adopted by the respondents while passing the order of recovery, neither, the Pension Rules pertaining to recovery was followed. Under such circumstances, the respondents are directed to refund the amount recovered, if not refunded till date, within a period of six weeks from the date of receipt/ production of a copy of this order.

8. With the aforesaid observations and directions, the writ petition stands allowed.