
(2012) 08 CHH CK 0029
In the Chhattisgarh High Court
Case No : Writ Petition S No. 3570 of 2011

Chhote Lal Rathore

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 LLJ 700 : (2012) 4 MPHT 106

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : D.R. Patel, for the Appellant; Pankaj Shrivastava Panel Lawyer for the State, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Shri Satish K Agnihotri, J.

Writ Petition Under Article 226 of The Constitution of India

1. By this petition, the petitioner impugns the order dated 29.05.2008 (Annexure-P/2) on the ground that the alleged excess amount paid to the petitioner during his service period has been directed to be recovered from the retiral dues of the petitioner. The indisputable facts, in brief, are that the petitioner working as Assistant Engineer, retired from his service on attaining the age of superannuation on 31.03.2008. Thereafter, without assigning any reason and without affording an opportunity of hearing, the impugned order 29.05.2008 (Annexure-P/2) was passed holding that excess payment has been made to the petitioner during the service period and the said amount has to be deducted from the retiral dues of the petitioner.

2. According to the petitioner, the alleged excess payment has been made to the petitioner while the petitioner was in service, however, the impugned recovery order has been passed only after retirement of the petitioner. Thus, the impugned order is bad in law and the same is not at all sustainable in the eyes of

law. Thus, this petition.

3. Learned counsel appearing for the petitioner submits that the issue as to whether recovery of excess payment for no fault of the employee can be made without following principles of natural justice is no longer *res integra*, the same has been settled by the Supreme Court in the matter of *Sahib Ram v. State of Haryana and others*¹, and further followed by this Court in the matter of *Vidyadhar Tiwari v. State of Chhattisgarh and Others*². In the instant case, the impugned order has been passed without affording any opportunity of hearing to the petitioner.

4. Learned counsel appearing for the State submits that it is true that no show cause notice was given to the petitioner. However, the impugned order has been passed on the basis of undertaking given by the petitioner vide Annexure R-2 to the extent that if any excess payment was made to the petitioner, during the course of his service, the same may be recovered. Thus, there is no infirmity or illegality in passing the impugned order.

5. Be that as it may, the respondent authorities have not followed the basic principles of natural justice and the impugned action has been taken without affording proper opportunity of hearing to the petitioner. The practice of passing order involving civil consequences, without show cause notice or without affording an opportunity, is condemned. Thus, the impugned order is bad on account of the fact that the petitioner was not afforded opportunity of hearing before passing the impugned order. The petitioner retired on 31.03.2008 and before settling the retiral dues, it appears that petitioner was forced to give the undertaking (Annexure R/2) which was not taken at the time alleged excess payment was made. Thus, it does not come within the purview of the clause, that the employee had knowledge that the payment received was in excess.

6. This Court, in *Vidyadhar Tiwari (supra)*, has held that the excess payment, if any, made to the petitioner, he was not at fault and the amount received by him might have been used by adjusting himself accordingly treating the same as his salary. At this stage, directing recovery of the alleged excess amount from the pensionary benefits/gratuity amount of the petitioner will not be just and proper.

7. In *Syed Abdul Qadir & others v. State of Bihar & Others*³, the Supreme Court observed that excess payment of emoluments/ allowances cannot be recovered if the excess amount was not paid on account of any mis-representation or fraud on the part of the employee and if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowances or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

8. It is not the case of the respondents that the excess payment has been made to the petitioner on account of any mis-representation or fraud on the part of the petitioner. The excess payment might have been made by wrong calculation or wrong interpretation of the provisions of law, if any.

9. The Supreme Court as well as this Court in a catena of decisions, time and again reiterates that no recovery of excess payment for no fault of the employee can be made without following the principles of natural justice. This Court in *Ramchandra Kurup v. State of C.G. & Others* 4 and other connected matters, observed as under :

19. A common thread running into the above decisions of the Supreme Court is that, for recovery of excess payment of emoluments/allowances, there are three conditions wherein the excess payment may be recovered, namely (i) excess payment was made on account of misrepresentation or fraud on the part of the employee, (ii) the employee had knowledge that the payment received was in excess, and (iii) the error was corrected within a short span of time of wrong payment.

10. In view of foregoing, this petition is allowed. The impugned order dated 29.05.2008 (Annexure P/2) is hereby quashed. The petitioner is entitled to full pensionary benefits/gratuity amount without any deduction. No order as to costs.