

**(2013) 01 CHH CK 0026**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition No. 2965 of 2004**

Gendram Gandharv

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

**Date of Decision :** 04-01-2013

**Acts Referred:**

Constitution of India, 1950 — Article 227

**Citation :** (2013) 1 CG.L.R.W. 371 : (2013) 2 CGLJ 311 : (2013) 2 MPJR 58

**Hon'ble Judges :** Manindra Mohan Shrivastava, J

**Bench :** Division Bench

**Advocate :** Sushil Sahu, for the Appellant; Raksha Awasthi, Panel Lawyer, for the State, for the Respondent

**Final Decision :** Allowed

## Judgement

Manindra Mohan Shrivastava, J.—Heard. This petition under Article 227 of the Constitution of India has been preferred for issuance of writ in the nature of mandamus, certiorari against order dated 11-10-02 (Annexure P/1), by which, fixation of pay has been altered and recovery has been directed.

2. Quintessential facts to determine the controversy involved in the petition are that the petitioner, while working as Heavy Vehicle Driver in contingency work-charge establishment in the office of respondent No. 3, was granted pay scale of Rs. 1150-1800/- w.e.f. 1-1-91 vide order dated 14-2-91 (Annexure P/4). In course of time, he was declared permanent member of work charge establishment w.e.f. 1-6-92 vide order date 7-6-95 (Annexure P/3). In course of time, vide order dated 20-3-02 (Annexure P/5), scale promotion to the next higher scale of Rs. 3500-5200/- was granted w.e.f. 19-4-99.

3. The grant of pay scale of Rs. 1150-1800 was later on found to have been granted erroneously to the petitioner resulting in issuance of impugned order dated 11-10-02 (Annexure P/1).

4. Assailing the correctness and validity of pay fixation done by the respondents

under impugned order, submission of learned counsel for the petitioner is that the pay scale of Rs. 1150-1800/- was granted to the petitioner after due consideration of his entitlement for the said pay scale w.e.f. 1-1-91. The order remained in force for almost ten years, therefore, withdrawal of the said pay scale after such a long time is illegal, arbitrary and irrational. The next submission of learned counsel for the petitioner is that withdrawal of the said pay scale w.e.f. the date it was granted and postponing grant of revised pay scale of Rs. 3050-4590/- (revised pay scale of Rs. 1150-1800/-) upto 1-1-96, is without any basis. It is also submitted that the respondent have altered the pay scale of the petitioner and even directed recovery after a long period, which has resulted in serious hardship to the petitioner particularly, when it is not a case of any fraud or misrepresentation on the part of the petitioner. Therefore, the impugned order altering fixation of pay and direction of recovery is unsustainable in law.

5. Per contra, learned State counsel contended that the petitioner was working as a work-charge employee and for work-charge, appropriate pay scale was Rs. 950-1530/-. There was no order/direction of the State Government that revised pay scale of Rs. 1150-1800/- would be admissible and payable to work charge Heavy Vehicle Driver w.e.f. 1-1-91 even then, the Executive Engineer, proceeded beyond his authority and passed order dated 14-2-91 (Annexure P/4). Later on, this was detected and therefore, pay scale was revised in appropriate pay scale i.e. 950-1530/-. Learned counsel for the petitioner submits that revised pay scale could be granted to the petitioner only in accordance with the Government policy, relevant rules and regulations. With effect from 1-1-96, revised pay scale has been granted to the petitioner and thereafter, scale promotion has also been granted to the petitioner as per his entitlement. Therefore, there is no illegality in the action of the respondents in either altering the pay fixation or directing recovery.

6. From the pleadings of the parties and the documents which have been placed on record, it is found that the crux of the dispute relates only to grant of revised pay scale of Rs. 1150-1180/- w.e.f. 1-1-91.

7. Vide order dated 14-2-91 (Annexure P/4) revised pay scale of Rs. 1150-1800/- was directed to be granted by the Executive Engineer. The said order does not refer to the provision of law or the policy or the direction of the Government pursuant to which the said direction was issued by the Executive Engineer. Learned counsel for the petitioner could not point out any particular rule, circular or policy to substantiate his submission that work-charge Heavy Vehicle Driver was entitled to revised pay scale of Rs. 1150-1800/- w.e.f. 1-1-91. Therefore, the stand of the respondents that the said pay scale was granted to the petitioner erroneously and without there being any order of the Government, deserves to be accepted.

8. Even otherwise, from the circular dated 27/29-3-01 (Annexure R/1), it is reflected that parity in the matter of grant of scale promotion was drawn between the drivers of regular establishment and permanent member of

contingency/work charge establishment. In that circular also, it has not been stated that w.e.f. 1-1-91, the contingency/work-charge driver would be entitled to revised pay scale applicable and admissible to a driver of a regular establishment. The details of petitioner's service, grant of various pay scales from time to time, contained in memo dated 29-5-04 (Annexure R/2) of the Executive Engineer also show that the petitioner was drawing pay in the scale of Rs. 950-1530/- per month w.e.f. 1-1-86. It has been clearly stated that, the Government has not issued any order granting pay scale of Rs. 1150-1800/- to work-charge Heavy Vehicle Driver/Truck Driver. It is therefore clear that the grant of pay scale of Rs. 1150-1800/- to the petitioner from 1-1-91 was erroneous. Therefore, in these circumstances, revision of petitioner's pay in the appropriate pay scale admissible to him as work-charge driver vide impugned order cannot be faulted.

9. The next question which arises for consideration as to whether the recovery as a consequence of such alteration of pay fixation is permissible under the law.

10. In the case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, the Supreme Court, after taking into consideration its earlier decisions on the issue regarding recovery of excess payment, held as under:--

58. The relief against recovery is granted by Courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in the cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, Courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram Vs. State of Haryana and Others, Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, Union of India (UOI) and Another Vs. M. Bhaskar and Others, V. Gangaram Vs. Regional Joint Director and others, Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, , Purshottam Lal Das and Others Vs. The State of Bihar and Others, Punjab National Bank and Others Vs. Manjeet Singh and Another, and Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.

In a recent decision in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, legal position was again reviewed. It was observed--

8. We are of the considered view, after going through the various judgments cited at the Bar, that this Court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay be recovered.

13. We are not convinced that this Court in various judgments referred to hereinabove has laid down any proposition of law that only if the State or its

officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.

14. We are concerned with the excess payment of public money which is often described as "taxpayers" money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the Government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir (Supra) and in Col B.J. Akkara (Supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.

In view of the aforesaid judgment of the Supreme Court, the legal position is not longer *res Integra* that in appropriate cases, where recovery becomes inequitable or causes hardship, it may not be permissible even if it has been found that excess payment was made. One of the important consideration, in such cases would be as to whether grant of higher pay scale and higher pay was a result of any fraud or misrepresentation on the part of the employee. It is nobody's case nor reflected from any material placed on record by the respondents, much less any pleadings to that effect that the petitioner, committed any fraud or misrepresented the authorities to procure higher pay scale for his benefit. It has also to be seen that the pay scale of Rs. 1150-1800/- was granted to the petitioner as back as on 14-2-91 and it took ten years for the respondents to detect and find out that grant of higher pay scale was erroneous, thus, for more than a decade, the petitioner was granted higher pay in the pay scale of Rs. 1150-1800/-. The petitioner is a low paid employee, a driver. In such case, where a low paid employee is subjected to recovery of pay in respect of a period which is more than ten years, it would result in serious hardship.

11. In the conspectus of the aforesaid circumstances as discussed above and particularly, taking into consideration that there was no fraud or

misrepresentation on the part of the petitioner, in the considered opinion of this Court, it would be inequitable to allow the respondents to recover such a huge amount from the petitioner, a low paid employee, in respect of the salary paid to him for more than ten years. Therefore, even if the pay scale is erroneously fixed, the respondents are not justified in ordering recovery against the petitioner. Though learned counsel for the respondents brought to the notice of this Court provisions contained in Clause 5 of instructions (Annexure R/3), in the circumstances stated above, the respondents cannot be allowed to invoke that clause to utter prejudice of the employee in a manner which become a tool for oppression, harassment and hardship. The respondents could have invoked that clause, had it been discovered at an early stage, may be few months, that higher pay has been erroneously granted. The provision relating to recovery does not confer an unbridled and unanalyzed power of recovery even after an indefinite length of time in a manner so as to cause serious hardship to a low paid employee. In the ultimate analysis, the impugned order is declared illegal and set aside only to the extent it orders recovery against the petitioner. Rest of the order shall remain in tact. No recovery shall be made from the petitioner in respect of the payment which has already been made to him. The petition is accordingly partly allowed. No orders as to costs.