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(2011) 07 JH CK 0179

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6207 of 2008

Sadho Charan Sahu APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:
Constitution of India, 1950 — Article 14, 21

Citation : (2011) 4 JCR 128

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—By the Court.--In this writ petition, the petitioner has prayed for quashing the part of the office order dated 26th March, 2007 (Annexure-2) as also for quashing the letter dated 8th June, 2007 (Annexure-3), whereby Rs. 94,853/- said to be paid to the petitioner, in excess, under 22(C) Scheme. The petitioner has further prayed for a direction on the respondents to refund the said amount, which has been deducted from the amount of his retiral benefits.

2. According to the petitioner, his pay scale was fixed by the superior authority. He was paid salary for discharging his duty and no excess amount had been paid to him. The payment was made under Fundamental Rule 22(C) by the order of the competent authority and there was no fraud or misrepresentation on the part of the petitioner in getting his salary fixed. It was not the fault of the petitioner, if his salary was fixed by the competent authority under certain scheme or under 22(C) Scheme. There was no misrepresentation or any role of the petitioner in getting the same benefit and as such the same cannot be recovered from him. But the respondents have arbitrarily and illegally deducted the amount from retiral benefits. It has been further submitted that no notice was given to the petitioner, informing him the reason for deduction and no opportunity of meeting was afforded to him. The deduction of the said amount by the respondents unilaterally is wholly arbitrary, unjust and illegal and the impugned orders are

liable to be quashed.

3. A counter-affidavit has been filed on behalf of the respondent No. 2. It has been stated, inter alia, that the said amount has been recovered from the petitioner, as the same was paid in excess due to wrong fixation of his pay scale. Recovery has been made as per the instruction of the Government.

4. I have heard learned counsel for the parties and considered the facts and materials on record. It is an admitted fact that the deduction of Rs. 94,853/- has been made from the amount of retiral benefits of the petitioner in the name of recovery of excess amount paid to the petitioner due to alleged error in his pay fixation. No notice was given to the petitioner and no opportunity was afforded to him for representation/hearing before deducting the said amount. There is no allegation that the alleged wrong fixation was a result of any fraud or misrepresentation of the petitioner. It is well established that any payment made by way of salary is in excess by the employer without any fraud or misrepresentation of the employee, the same cannot be recovered. Moreover, recovery of the said amount from the amount of retiral dues of the petitioner without giving any notice and opportunity of hearing offends Articles 14 and 21 of the Constitution of India and is violative of principle of natural justice. The impugned orders are wholly unjustified, arbitrary and illegal and the same cannot sustain.

5. This writ petition is allowed. The office order, contained in memo No. 1689 dated 26th March, 2007 (Annexure-2) and Letter No. 3157 dated 8th June. 2007 (Annexure-3) are quashed. The respondents are directed to refund the deducted amount to the petitioner within two months from the date of receipt/production of a copy of this order.

6. If the deducted amount is not refunded to the petitioner within the aforesaid period, the petitioner shall be entitled to get interest @ 10% per annum from the date the said amount was deducted till the date of refund of the same to the petitioner.

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