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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (S) No. 4769 of 2008

Petitioner

Chunni Lal Dansena, son of Late Shivrat Dansena, Retired Asst. Teacher, aged about 63 years, Residence of Pandripani (Pathratoli), Tahsil Patthalgaon, District Jashpur, Chhattisgarh.

Versus

Respondents

- 1) State of Chhattisgarh, through Secretary, Department of Tribal Welfare, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh.
- 2) The Commissioner, Tribal Welfare, D.K.S. Bhawan, Raipur, Chhattisgarh.
- 3) The Joint Director, Accounts, Treasury and Pension, Bilaspur, Chhattisgarh.
- 4) The Assistant Director, Tribal Development, Jashpur, Chhattisgarh.

(Writ Petition under Article 226 of the Constitution of India.)

Single Bench : Hon'ble Mr. Satish K. Agnihotri, J.

Present : Shri C.J.K. Rao and Shri K.P. Sahu, counsel for the petitioner.  
Shri M.P.S. Bhatia, Dy. Govt. Advocate for the State.

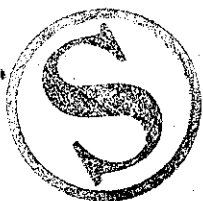
ORAL ORDER

(Passed on 29<sup>th</sup> day of August, 2008)

With the consent of learned counsel appearing for the parties, the matter is heard finally.

2) The petitioner was appointed as an Assistant Teacher on 30-6-1973 in the respondents department. The petitioner retired from services on attaining the age of superannuation on 30-11-2007. After his retirement, the petitioner received letters dated 24-1-2008 & 11-3-2008 (Annexure P/1), directing recovery of a sum of Rs.26,454/- on account of excess payment made to the petitioner.

3) Learned counsel appearing for the petitioner submits that the petitioner was not given any opportunity to explain about the payment made to the petitioner. Thus, this order is vitiated for want of compliance of the principles of natural justice and fair play in-action. Learned counsel further



submits that there is no fault on the part of the petitioner and the amount is paid to him in accordance with the pay scales, revised and fixed by the respondents from time to time. No reason has been assigned as to on which count the excess payment, if any, was made. The respondents cannot recover the amount, already paid to the petitioner after his retirement, that too without following the principles of natural justice.

4) Learned counsel appearing for the respondents/State submits that it is true that no show cause notice was given to the petitioner. The petitioner was not called upon to submit his explanation for payment of alleged excess payment and recovery thereafter.

5) The respondent authorities have not followed the principles of natural justice and the impugned action has been taken without affording an 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, this action of deducting Rs.26,454/- from retiral dues is bad on account of the fact that the petitioner was not afforded any opportunity of hearing before the impugned action was taken, also.

6) The Hon'ble Supreme Court in the case of Sahib Ram Vs. State of Haryana and others<sup>1</sup> in para 5 has held as under:

"5. However, it is not on account of any misrepresentation made by the appellant that the benefit of higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances, the amount paid till date may not be recovered from the appellant."

7) The Hon'ble Supreme Court in the case of P. Tulsidas and others v. Government of A.P. and others<sup>2</sup>, observed that the benefit accrued earlier by way of grant of higher pay or revised pay, cannot be taken away as the same is violative of Article 14 and 16 of the Constitution of India being arbitrary, unreasonable and expropriatory.

8) This Court, in the case of Vidyadhar Tiwari Vs. State of Chhattisgarh & others<sup>3</sup> has held that for the excess payment, if any, made to the petitioner, he was not at fault and the amount received by him might

<sup>1</sup> 1995 Supp (1) SCC 20

<sup>2</sup> AIR 2003 SC 43

<sup>3</sup> 2006 (1) MPHT 105 (CG)



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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 of the petitioner will not be just and proper.

9) In view of the reasons mentioned hereinabove, this petition is allowed. The impugned letters dated 24-1-2008 & 11-3-2008 (Annexure P/1) directing recovery a sum of Rs.26,454/- on account of excess payment made to the petitioner, is hereby quashed. The petitioner is entitled to full pensionary benefits/gratuity amount without any deduction. If the amount has been recovered, the petitioner is entitled to the said amount with interest at the rate of 6% per annum. However, it is open to the respondents to take recourse to Rule 65 of the Chhattisgarh Civil Services (Pension) Rules, 1976, if so advised, in accordance with law following basic principles of natural justice. No order as to costs.

Gowri

Sd/-  
**Satish K. Agnihotri**  
Judge