



XI-HC-78

03/02/09

(23)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p style="text-align: center;">Single Bench; Hon'ble Mr. Justice Dhirendra Mishra W.P. [s] No.6879/08 (Petition U/A 226 of Constitution of India)</p> <p><u>Petitioner</u> Santosh Sahu, S/o Shri Ghasiram Sahu, Aed about 66 years, Rtd. U.D.T., R/o HIG-1/484, New Borshi, Vistar Housing Board Colony, Borshi, Durg, Distt. Durg (C.G.)</p> <p style="text-align: center;">Vs</p> <p><u>Respondents</u> 1. State Govt. of Chhattisgarh, Through: the Secretary, Education Department, D.K.S. Bhawan, Raipur (CG). 2. Divisional Joint Director, (Treasury and pension), Raipur (CG)</p> <p>-----</p> <p><u>Present:</u> Mr. Somkant Verma, Adv. for the petitioner. Mr. P. Shrivastava, Panel Lawyer for the State.</p> <p>-----</p> <p><u>31.01.2009</u> Heard.</p> <p>The petitioner has filed this petition being aggrieved by the order of Annexure P-1 dated 28.2.2001 passed by respondent No.2 herein whereby a sum of Rs.92,595/- has been ordered to be recovered on account of excess payment made to the petitioner.</p> <p>Learned counsel for the petitioner submits that the petitioner retired on 31.12.2000 as Forest Guard and thereafter, he has been served with an order contemplating recovery of Rs.92,595/- on the pretext that the same has been paid in excess of his entitlement.</p>	

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	<p>Learned counsel for the petitioner submits that the order impugned is per-se contrary to law as the same has been passed without giving any show cause notice and without affording any opportunity of hearing to the petitioner in violation of circular dated 27.5.2008 of Annexure P-2 which directs that before effecting recovery from the retired employees a show cause notice should be issued. He further submits that case of the petitioner is squarely covered by the order dated 16th June, 2008 passed in WP (S) No.2820/2008 (Ram Sunder Mishra V. State of C.G. & others).</p> <p>Respondents were allowed time to file return to the petition vide order dated 10.12.2008, however, no reply has been filed by the respondents.</p> <p>I have heard learned counsel for the parties.</p> <p>This Court in the matter of Ram Sunder Mishra (Supra) placing reliance on the decision of the Honble Supreme Court in the matter of Sahib Ram V. State of Haryana and others¹ and Vidyadhar Tiwari V. The State of Chhattisgarh & Others² 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</p>	
	<p>¹ 1995 Supp (1) SCC 20</p> <p>² 2006 (1) MPHT 105 (CG)</p>	

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2	<p>benefits/gratuity amount of the petitioner may not be just and proper. Even for the purposes of exercising power under Rule 65 of the Rules, 1976, basic principles of natural justice and fair play in action are required to be followed.</p> <p>For the aforesaid reasons, the instant petition is allowed in terms of the order passed in the case of Vidyadhar Tiwari (Supra). The impugned order dated 28.2.2001 (Annexure-P-1) regarding recovery from the petitioner on account of excess payment is hereby quashed. The petitioner is entitled to full pensionary benefits/gratuity amount without any deduction. However, it is open to the respondents, if so advised, to take recourse to Rule 65 of the Rules, 1976, in accordance with law and basic principles of natural justice.</p> <p>Certified copy as per rules.</p>	<p>Sd/- Dhirendra Mishra Judge</p>