

CP 1202

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT  
BILASPUR (C.G.)  
WRIT PETITION S. NO. 6141 /2007

PETITIONER

Makhiyar Ram Badaik

S/o. Shri Motaka Ram Badaik

Aged about 62 years,

R/o. vill Sonkiyari

Police Station – Sanna

Tahsil – Bagicha,

District – Jashpur (C.G.)

675767  
 A.P. Yadav  
 dated 19/9/07

VERSUSRESPONDENTS

1. State of Chhattisgarh  
Through the Secretary  
Deptt of Schedule Tribe Welfare  
D.K.S. Bhawan, Raipur (C.G.)
2. The Accountant General  
State of Chhattisgarh,  
Raipur (C.G.)
3. The Joint Director,  
Treasury, Accounts & Pension  
Bilaspur Division, Bilaspur (CG)
4. Assistant Commissioner,  
Deptt of Tribal Welfare  
Jashpur Nagar,  
Distt. Jashpur (C.G.)
5. Block Education Officer,  
Manora, Tahsil and Distt.  
Jashpur (C.G.)

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WRIT PETITION UNDER ARTICLES 226/227 OF THE  
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE  
NATURE OF MANDAMUS, PROHIBITION AND CERTIORARI

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29.X.2010  
Mr  
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**HIGH COURT OF CHHATTISGARH : BILASPUR**

**SINGLE BENCH: HON'BLE SHRI MANINDRA MOHAN SHRIVASTAVA, J.**

**Writ Petition (S) No6141/2007**

**PETITIONER**

Makhiyar Ram Badaik

**Versus**

**RESPONDENTS:**

State of Chhattisgarh and others

**WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA**

**POST FOR ORDER ON 29<sup>th</sup> OCTOBER, 2010**

Sd/-  
M.M. Shrivastava  
Judge

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**HIGH COURT OF CHHATTISGARH : BILASPUR**

**Single Bench: Hon'ble Shri Manindra Mohan Shrivastava, J.**

**Writ Petition (S) No6141/2007**

**PETITIONER**

Makhiyar Ram Badaik

**Versus**

**RESPONDENTS:**

State of Chhattisgarh and others

**WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA**

**Present:**

Shri J. S. Baraik, counsel for the petitioner.

Shri V. V. S. Murthy, Deputy Advocate General for the State/respondents No.1 & 3 to 5.

Shri R. Pradhan, counsel for respondent No.2.

**ORDER**

(Passed on 21<sup>st</sup> October, 2010)

This petition is directed against the order dated 21-02-2006 (Annexure P-

1) passed by the respondent No.5 on the basis of letter dated 21-12-2005 of the Joint Director, (Treasury & Accounts), Bilaspur, making recovery of Rs.3,68,911/- from the petitioner stating that the said amount has been paid in excess to the petitioner towards his salary during the period from 01-04-1981 to 31-03-2005 while he was in service. The petitioner has also raised claim for payment of retiral dues of the amount of Rs.3,86,043/-.

2. Assailing the correctness and validity of the order passed by the respondents in making recovery from the amount of retiral dues of the petitioner, learned counsel for the petitioner submitted that the action of the respondents is arbitrary firstly for the reason that the impugned action of recovery on the basis of alleged excess payment has been taken without affording any opportunity of hearing to the petitioner, which is violative of the principles of natural justice. The second limb of submission of learned counsel for the petitioner is that while the petitioner was in service, he was paid salary on the basis of various pay fixations

done from time to time on account of revision of pay scales. Learned counsel for the petitioner argued that in the absence of there being any case of the respondents that the excess payment was result of any fraud or misrepresentation on the part of the petitioner, whatsoever payments have already been made to the petitioner over such a long period from 01-04-1981 to 31-03-2005 i.e. almost 25 years, could not be recovered from the petitioner at the time of his retirement and the same would result in serious and grave hardship, as the petitioner is a retired Teacher. Learned counsel for the petitioner then submits that it is not a case where the petitioner received higher salary knowing fully well that he was not entitled to it, therefore, the respondents are stopped from not making such a huge amount of recovery that too from the retiral dues of the petitioner. Learned counsel for the petitioner relies upon the decisions in the case of *Sahib Ram v. State of Haryana and others*, 1995 Supp (1) SCC 20, *Syed Abdul Qadir & others v. State of Bihar & Others*, (2009) 3 SCC 475 and the order passed by this Court in the case of *Vidyadhar Tiwari Vs. The State of Chhattisgarh & Others*, 2006(1) MPHT 105 (CG).

3. On the other hand, submission of learned counsel for respondent No.2 is that as the recovery has been made by the respondents No.1 & 3 to 5, the action is required to be taken against the concerned respondent.

4. Learned counsel for respondents No.1 & 3 to 5 submits that the excess payment towards salary was made to the petitioner due to wrong calculation of his pay at various stages of up-gradation in the pay scale. He further submits that when the pay of the petitioner was revised under the Madhya Pradesh Pay Revision Rules, 1987, the petitioner had executed an undertaking on 17-04-1990 (Annexure R-1) that in case, in future, it is found that any excess payment has been made, then the petitioner would be liable to refund the excess amount.

Thereafter, while revising the pay of the petitioner under Madhya Pradesh Pay Revision Rules, 1998, the petitioner had again executed an undertaking of the similar nature on 08-06-1998 (Annexure R-2). It is submitted that on account of undertaking given by the petitioner, he could not raise any such grievance against the action of recovery of excess payment made to the petitioner.

5. It is not in dispute that before effecting recovery of such a huge amount of Rs.3,68,911/- from the retiral dues of the petitioner after his retirement, no opportunity of hearing has been afforded to the petitioner. Consequences of such action of recovery are grave and serious in nature, as the petitioner, who was retired as a Teacher from the School is deprived of almost entire amount of his retiral benefits which would have been paid including Rs.3,68,911/-. Neither in the return nor from any other document or calculation with reference to relevant Pay Revision Rules, appropriate pay scale chart, it has been demonstrated by the respondents as to how the petitioner was paid excess amount. True it is that the petitioner had given an undertaking that if excess amount is found to be paid, the same may be recovered. However, this would not mean that the respondents could effect recovery of the amount which were paid to the petitioner from year 1981 and paid till 2005 that too after his retirement from his retiral dues. It was for the respondents to have periodically scrutinized as to whether proper fixation has been made. If no action for recovery has been taken within a reasonable period, it would not be permissible for the respondents to initiate any recovery that too without giving any opportunity of hearing after long time, as by that time whatsoever paid to the petitioner, has been expended by the petitioner under a bonafide belief that the same was due and payable to him.

6. There is no material placed on record by the respondents to draw any conclusion that the so-called excess payment was an outcome of any fraud or

misrepresentation on the part of the petitioner. In fact, it is not at all the case of the respondents that earlier excess payments were made because of any fraud or misrepresentation on the part of the petitioner.

7. Thus, the respondents have firstly failed to establish that the salary which was paid to the petitioner over last two and half decades from year 1981 to 2005 was in excess of what was due and payable to the petitioner, upon fixation of pay in the appropriate pay scale under Pay Revision Rules implemented from time to time. The respondents have failed to prove, much less averred, that the same was an outcome of any fraud or misrepresentation. It is not in dispute that the serious adverse action was taken against the petitioner without complying with the minimum requirements of principles of natural justice. Relying upon the decisions in the case of *Sahib Ram (supra)*, *Syed Abdul Qadir & others (supra)* and the order passed by this Court in the case of *Vidyadhar Tiwari (supra)*, the impugned action of the respondents No.1 & 3 to 5 in making recovery to the tune of Rs.3,68,911/- from the retiral dues of the petitioner cannot be sustained in the eye of law. Consequently, the action and order of recovery dated 21-02-2006 (Annexure P-1) is declared illegal and hereby set aside. The respondents shall be obliged to make payment of all retiral dues of the petitioner without undue delay. As the petitioner has retired on 31-03-2005, the entire amount of retiral dues shall carry simple interest @ 10% per annum from the date it became payable under various heads till the date of actual payment.

8. In view of foregoing, the petition is allowed to the extent indicated above. There shall be no orders as to cost.

Sd/-  
M.M. Shrivastava  
Judge