



2025:CGHC:2151-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WA No. 899 of 2024

1. State of Chhattisgarh Through Secretary, Mantralaya, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh.
2. State of Chhattisgarh Through Secretary, Urban Administration Development Department, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh.
3. Joint Director Regional Office, Urban Administration Development Department, Subhash Stadium, Raipur, Chhattisgarh.
4. Deputy Director, Local Fund Audit Rajnandgaon, District Rajnandgaon, Chhattisgarh.
5. Deputy Director (Pension) Urban Administration Development Department, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh

... Appellant(s)

versus

1. B.P. Tiwari S/o Late Chandrika Prasad Aged About 64 Years Sector 7 Road No. 36/1/d Bhilai, District Durg, Chhattisgarh.
2. Nagar Nigam Bhilai Through The Commissioner, Nagar Nigam Bhilai, District Durg, Chhattisgarh (Respondent No. 6)
3. Chief Municipal Officer, Nagar Nigam Bhilai, District Durg, Chhattisgarh. (Respondent No. 7)

...Respondent(s)

For Appellants/State	:	Mr. Yashwant Singh Thakur, Additional Advocate General.
For Respondent No. 1	:	Ms. Hamida Siddiqui, Advocate.
For Respondents No. 2 & 3	:	Mr. H.S. Ahluwalia, Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge
Judgment on Board

Per Ramesh Sinha, Chief Justice

14.01.2025

1. Heard Mr. Yashwant Singh Thakur, learned Additional Advocate General for the appellants/State as well as Ms. Hamida Siddiqui, learned counsel, appearing for respondent No. 1 through video conferencing and Mr. H.S. Ahluwalia, learned counsel, appearing for respondents No. 2 & 3 on I.A. No. 2 of 2024, which is an application for condonation of delay.
2. After hearing the learned counsel for the parties and considering the reasons mentioned in the application, we are of the considered opinion that sufficient cause has been shown in the application and accordingly, I.A. No. 2 of 2024 is **allowed** and delay of 332 days in filing the appeal is condoned.
3. The present intra Court appeal has been filed by the appellants against the order dated **22.11.2023** passed by the learned Single Judge in **WPS No. 2689 of 2021 (*B.P. Tiwari vs. State of Chhattisgarh & Others*)**, whereby the learned Single Judge has allowed the writ petition filed by the respondent No. 1/writ petitioner herein.
4. Brief facts of the case are that initially the respondent No. 1/writ petitioner was appointed as an Assistant Revenue Inspector and was posted as Incharge Chief Municipal Officer, Nagar Panchayat, Chhuriya. During the financial year 2008-09 an audit was conducted in Nagar

Panchayat Chhuriya and as per the audit report it was alleged that the respondent No. 1/writ petitioner along with other two employees had committed misappropriation of fund of the Nagar Panchayat amounting to Rs. 1,30,137/-. A special audit was also conducted in which it was found that total sum of Rs. 10,14,170/- was misappropriated by the respondent No. 1/writ petitioner and other two employees, but, since then, no further action was taken on that issue nor was any show-cause notice issued to the respondent No. 1/writ petitioner superannuated on 31.03.2019. Thereafter, when the respondent No. 1/writ petitioner moved an application before the concerned authorities for grant of his retiral dues including gratuity and pension, the appellants authorities issued the impugned order dated 21.01.2021 (Annexure P/4 in the writ petition) and the communication dated 22.03.2021 (Annexure P/1 in the writ petition) which show that the amount of gratuity of Rs. 6,89,535/- has been sanctioned. However, the amount of Rs. 4,68,194/- has been withheld. That is, Rs. 2,21,341/- only has been paid to the respondent No. 1/writ petitioner towards gratuity.

5. Learned State counsel submits that the respondent No. 1 was appointed as an Assistant Revenue Inspector and was posted as Incharge Chief Municipal Officer, Nagar Panchayat, Chhuriya. During the financial year 2008-09, an audit was conducted in Nagar Panchayat Chhuriya and as per the audit report, it was alleged that the respondent No. 1 along with other two employees had committed misappropriation of fund of the Nagar Panchayat amounting to Rs. 1,30,137/-. He further submits that on account of aforesaid misappropriation of fund, a special audit was also conducted wherein it was found that total sum of

Rs.10,14,170/- was misappropriated by the respondent No. 1 and other two employees, but, since then, no further action was taken on that issue nor was any show-cause notice issued to the respondent No. 1 nor was any inquiry conducted.

6. It is further contended by the learned State counsel that the respondent No. 1 superannuated on 31.03.2019 and thereafter, he moved an application before the concerned authorities for grant of his retiral dues including gratuity and pension, the appellants authorities issued the order dated 21.01.2021 (Annexure P/4 as filed in the writ petition) and the communication dated 22.03.2021 (Annexure P/1 as filed in the writ petition) which show that the amount of gratuity of Rs. 6,89,535/- has been sanctioned. However, the amount of Rs. 4,68,194/- has been withheld and Rs. 2,21,341/- has been only paid to the respondent No. 1 towards gratuity. He also submits that being aggrieved by the order dated 21.01.2021 and the communication dated 22.03.2021, the respondent No. 1 filed a petition bearing WPS No. 2689 of 2021 before this Court with following relief(s):

“10.1 This Hon'ble Court may kindly be pleased to quash the impugned order dated 22.3.2021 (Annexure P-1).

10.2 That, as an alternative this Hon'ble Court may kindly direct the respondent authority to decide the audit objection within stipulated period of time to fasten the liability upon the petitioner for recovery.

10.3 That, this Hon'ble Court may kindly be pleased to

direct the respondent authority to make payment of the gratuity amount to the petitioner.

10.4 Any other relief, which this Hon'ble Court may deem fit and proper, may also be passed in favour of the petitioner together with cost of the petition."

7. Learned State counsel states that the aforesaid petition *i.e.* WPS No. 2689 of 2021 was allowed directing the appellants to release the full amount of the gratuity of the respondent No. 1 along with simple interest at the rate of 8% per annum on the full amount of the gratuity with effect from the date of his retirement till actual and final payment of the gratuity and this shall be done within a period of three months of receipt of this order, failing which, in place of 8% simple interest, 10% simple interest shall be paid on the same full amount and for the same period as ordered above. He also states that the learned Single Judge ought to have considered that a departmental enquiry against the respondent No. 1 in respect of the audit objection is pending and as soon as decision is taken on the said enquiry, the gratuity withheld will be paid to the respondent No. 1 in accordance with law as per the outcome of the said enquiry as the said amount is of public exchequer.

8. It is further contended by the learned State counsel that the learned Single Judge ought to have considered that the letter dated 16.07.2020 reveals that the respondent No. 1 was personally liable for Rs. 1,30,137/-, the loss incurred to the department and further an amount of Rs. 10,14,170/- was also to be recovered from two other employees including the respondent No. 1 herein and thus apportioning the amount of

Rs.10,14,1170/- amongst the three, the recovery against the respondent No. 1 is of Rs. 3,38,057/- and thus total recoverable amount against the respondent No. 1 comes to Rs. 4,68,194/-. He also contended that the learned Single Judge ought to have considered that after receiving the audit objection vide letter dated 10.09.2020, the pension case of the respondent No. 1 was referred to the State Government by the Director, Urban Administration & Development, and therefore, vide order dated 27.10.2020, the amount was directed to be recovered on account of audit objection.

9. Learned State counsel would submit that the learned Single Judge ought to have considered that respondent No. 1 being Assistant Revenue Inspector at Nagar Palika Nigam, Bhilai and thus while holding a reasonable post committed several financial irregularities and the amount being public money, the same is required to be recovered in order to avoid financial loss to the public exchequer. Therefore, the respondent No. 1 cannot take a plea of his retirement and any sort of consideration. Hence, the order passed by the learned Single Judge dated 22.11.2023 is untenable in the eyes of law and deserves to be quashed.

10. On the other hand, learned counsel, appearing for respondent No.1/writ petitioner submits that the learned Single Judge after considering all the aspects of the matter has rightly allowed the writ petition filed by the respondent No. 1/writ petitioner, in which no interference is called for.

11. We have heard learned counsel for the parties and perused the impugned judgment and materials available on record.

12. Undisputedly, the respondent No. 1/writ petitioner was appointed as an Assistant Revenue Inspector and at the time of his retirement he was posted as Revenue Sub Inspector which is a Class-III post.

13. Dealing with the issue, the learned Single Judge relied upon the judgment of the Hon'ble Supreme Court in the matter of ***Punjab vs. Rafiq Masih (White Washer)***, reported in ***(2015) 4 SCC 334***, wherein the Hon'ble Supreme Court held that certain situations under which the recovery is totally impermissible under law. The situations as envisaged by the Hon'ble Supreme Court are as under:

“18.

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

14. It clearly reflects that the matter of the respondent No. 1/writ petitioner is attracted and covered by the above-mentioned judgment of the Hon'ble Supreme Court. Therefore, on this alone ground itself the order of withholding of the gratuity of the respondent No. 1/writ petitioner after his retirement is impermissible under law.

15. Further, it was the contention on behalf of the learned State counsel that after the retirement of the respondent No. 1/writ petitioner a departmental enquiry has been initiated against him regarding the audit report. However, no document in this regard has been filed by the State. If the above contention of the learned State counsel is taken as it is then also admittedly before retirement of the respondent No. 1/writ petitioner no departmental enquiry was initiated against him nor was any show-cause notice issued to him. For the alleged misappropriation of fund, which was done in the financial year 2008-09, since no judicial (criminal) proceedings in terms of Rule 9(6)(b)(i) of the Pension Rules, 1976 was instituted against the respondent No. 1/writ petitioner or was pending against him on the date of his retirement and as submitted by the learned State counsel charge-sheet was issued to the respondent No. 1/writ petitioner after his retirement and issuance of final order after conclusion of the departmental enquiry will not be applicable in this case, the respondent No. 1/writ petitioner is entitled for full gratuity amount on the

date of his retirement.

16. For the foregoing reasons, the learned Single Judge allowed the writ petition filed by the respondent No. 1/writ petitioner and directed the appellants to release the full amount of the gratuity of the respondent No.1/writ petitioner along with simple interest at the rate of 8% per annum on the full amount of the gratuity with effect from the date of his retirement till actual and final payment of the gratuity and this shall be done within a period of three months of receipt of the order dated 22.11.2023 passed by the learned Single Judge, failing which, in place of 8% simple interest, 10% simple interest shall be paid on the same full amount and for the same period as ordered above. Learned Single Judge also made it clear that the order dated 22.11.2023 shall not bar the appellants to proceed in accordance with law with respect to the audit report.

17. Considering the pleadings made in writ appeal, submissions advanced by the learned counsel appearing for the parties and also considering the findings recorded by the learned Single Judge while allowing the writ petition filed by the respondent No. 1/writ petitioner, we are of the considered opinion that the learned Single Judge has not committed any illegality, irregularity or jurisdictional error warranting interference by this Court.

18. Accordingly, the present writ appeal being devoid of merit is liable to be and is hereby **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice