SYED MUHAMMAD ATTIQUE SHAH, J.-

Petitioner through the instant writ petition has approached this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer:-

“On acceptance of instant writ petition, the respondents No.7 and 8 be directed to return the amount of Rs.400,000/- to the petitioner as genuine compensation of two dead persons i.e. wife and son of the petitioner, and notice dated 05.08.2011 be declared as null and void and any other relief which the Honourable Court deems fit and proper in the circumstances of the case.”
2. Brief facts of the case, as stated in the instant petition are, that on 09.07.2011 the petitioner’s wife namely Jamshed Bibi and son Muhammad Ghurran died of catastrophic flood and thunder bolt from blue in District Battagram. The petitioner was paid Rs.300,000/- for each deceased total Rs.600,000/- in terms of Notification No.Nil/ Flood Relief (Rate)2K-10 dated 18.08.2010, which was transferred in his account as a relief compensation. Later, respondent No.8 issued a notice dated 05.08.2011 to the petitioner for recovery of Rs.4,00,000/- from him. Subsequently, the said amount of four lac rupees was got transferred back through cross cheque dated 09.08.2011. Thereafter, the petitioner filed Civil Suit No.182/1 against the respondents in the Court of Senior Civil Judge, Battagram, which was returned to the petitioner under Order VII Rule 10 CPC for presenting the same before the competent forum. The petitioner has now challenged the validity of impugned notice dated 05.08.2011 and forceful recovery of Rs.400,000/- from him through the present writ petition.
3. Learned counsel for the petitioner argued that the petitioner was entitled under Notification No.Nil/Flood Relief (Rate)2K-10 dated 18.08.2010 for an amount of Rs.300,000/- each for both the deceased, and he was accordingly paid under the said Notification, however, later, without lawful authority, the respondents No.2 and 8 have deprived the petitioner from an amount of Rs.400,000/- and in this respect a cross cheque was forcibly obtained from him, which was illegal, based on malafide and was the result of colourful exercise of authority, hence the said illegal acts of respondents are liable to be declared as null and void and the petitioner is entitled to receive back the said amount of Rs.400,000/- from them.

4. Learned AAG representing the respondents argued that the petitioner was paid an amount of Rs.300,000/- for each deceased, however, he was not entitled under the Notification ibid, rather the petitioner was only entitled to receive an amount of Rs.100,000/- for each deceased under Notification No.11497/Flood Relief(Rate)2K-6 dated 11.08.2006 and he was inadvertently paid an
amount of Rs.300,000/- per deceased under Notification No.Nil/Flood Relief (Rate)2K-10 dated 18.08.2010, therefore, the same has been rightly recovered from him and thus no illegality has been committed by the respondents.

5. Arguments heard. Record perused.

6. The facts as averred in the writ petition have not been denied by the respondents, Moreover, the provincial Government has been paying compensation to the bereaved families of the calamity affected areas under National Calamity (Prevention and Relief) Act, 1958, however, under the Act ibid, the Provincial Government has to notify the quantum of amount of compensation to the families of the persons, who had died in the calamity affected areas or had sustained injuries. We have before us two notifications under the Act ibid. Before dilating upon the controversy involved in the present petition, this Court would deem it appropriate to reproduce below the contents of both the Notifications for the sake of convenience.

"GOVERNMENT OF NWFP
PROVINCIAL RELIEF COMMISSIONER
Peshawar Ph#:091/9212058-60
Dated 11/08/2006

NOTIFICATION"
No. 11497 Flood Relief (Rate)2K-6. With the approval of the competent authority, in exercise of the powers conferred under section 4(1) of the National Calamity (Prevention and Relief) Act, 1958, the Government of NWFP is pleased to revise the rates of Relief compensation (previously notified vide Notification No.15710/Flood/Relief dated 11-07-2005 as given in Para-8 of the standing instruction for utilization of grants under Head 107101-Relief measures or other funds for providing immediate relief to the population affected by any calamity under section 3 of the said Act:-

1. **LOSS OF LIFE**
   i. Where the Bread Winner alone has died. Rs. 100,000/-
   ii. Non-Bread Winner. Rs. 100,000/-
   iii. Where the Persons has seriously been Injured or disabled Rs. 50,000/-

2. **LOSS OF PROPERTY/HOUSE**
   i. Residential house completely damaged (Pakka) Rs. 25,000/-
   ii. Residential house completely damaged (Kacha) Rs. 25,000/-
   iii. Residential house partially damaged (Pakka) Rs. 10,000/-
   iv. Residential house partially damaged (Kacha) Rs. 10,000/-

3. **LOSS OF ANIMALS**
   i. Cow, Buffalo, Horse & Camel Rs. 10,000/-
   ii. Goat, Sheep & Donkey Rs. 10,000/-

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No. 11497 Flood Relief (Rate)2K-10. With the approval of the competent authority, in exercise of the powers conferred under section 4(1) of the National Calamity (Prevention and Relief) Act, 1958, the Government of Khyber Pakhtunkhwa is pleased to announce special rates of Relief compensation only for dead & injured persons of the flood disaster that occurred during last week of July and first week of August 2010 under section 3 of the said Act.

**LOSS OF LIFE (Special Package)**
iv. Where the Bread Winner alone has died. Rs. 300,000/-
v. Non-Bread Winner. Rs. 300,000/-
vi. Where the Persons has seriously been Injured Rs. 100,000/-

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7. This Court when placed both the Notifications in juxta position reached to the conclusion that both the notifications were issued under section 4(1) of the National Calamity (Prevention and Relief) Act, 1958. Notification dated 18.08.2010 extends special package but it has been restricted for dead
and injured persons pertaining to flood disaster, which occurred during the period in between last week of July and first week of August, 2010 under section 3 of the Act ibid. Whereas, the Notification dated 11.08.2006 provides uniform rates for providing immediate relief to the population affected by any calamity. Without going into the facts of the case that which one of the two Notifications was applicable to it, suffice it to mention that the petitioner has been paid compensation of Rs.600,000/- for two deceased persons of his family due to disaster occurred in District Battagram on 09.07.2011 on the basis of Notification dated 10.08.2010. It is obvious, that under the law, once the petitioner has been given the relief under the notification dated 18.8.2010, then the same relief cannot be withdrawn by the authorities, as the present petitioner has not committed any fraud or made any misrepresentation to the respondents regarding the applicability of either of the Notifications, the petitioner had only requested for compensation, which was granted to him by the respondents under the notification of the
year 2010. Thus, the impugned payment is neither the result of fraud nor misrepresentation and even the grant of the said amount of compensation does not suffer from any jurisdictional defect, as the competent authority has duly approved the said compensation, hence the respondents had left with no authority to ask or demand for the refund of the said amount. In this respect reliance is placed on case titled “Pakistan, through the Secretary, Ministry of Finance Vs. Muhammad Himayatullah Farukhi” (PLD 1969 SC 407), wherein, it has been held that:

“There can hardly be any dispute with the rule as laid down, in these cases that apart from the provisions of section 21 of the General Clauses Act, locus poenitentiae, i.e., the power of receding till a decisive step is taken, is available to the Government or the relevant authorities. In fact, the existence of such a power is necessary in the case of all authorities empowered to pass orders to retrace the wrong steps taken by them. The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights.”
8. Thus, keeping in view the above stated facts, circumstances and discussions made thereupon, this Court reached to the conclusion that the impugned show cause notice dated 05.08.2013 as well as recovery of the said amount from the petitioner was illegal and not warranted under the law.

9. Accordingly, the present writ petition is allowed, Notice dated 05.08.2013 and forceful recovery of Rs.400,000/- from the petitioner are held to be illegal, thus are set aside. Respondents are directed to release back the recovered amount of Rs.400,000/- to the petitioner within thirty days from the date of receipt of this judgment.

JUDGE

JUDGE

Dt.03.10.2017.

M. Saleem/*