

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 680 of 2013**

- Daya Das Diwan S/o Dharan Dayal Diwan Aged About 46 Years Working As Peon, Govt, Higher Secondary School, Kudumkela, Block Gharghoda P.S. Gharghoda District Raigarh C.G.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Tribal Welfare Department, Mantralaya P.S. Rakhi Tahsil Aarang, Naya Raipur District Raipur C.G.
2. Commissioner Raipur, Tribal Welfare Department, Raipur C.G.
3. Assistant Commissioner Tribal Welfare Department Raigarh C.G.
4. Collector Raigarh Distt. Raigarh C.G.

---- Respondent

For Petitioner : Shri CJK Rao, Advocate.
For Respondents : Shri S. Majid Ali, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****Passed on :16/10/2015**

1. Prayer in this writ petition under Article 226 of the Constitution of India is for issuance of direction to the respondents to grant regular pay scale to the petitioner from the date i.e. 4.10.1997 when the same was withdrawn till 9.9.2008 when the same was paid to the petitioner pursuant to his regularization.

2. The petitioner was appointed as Contingency Paid Peon on 28.1.1991. He was allowed regular pay scale with effect from 22.2.1994 on completion of 3 years service. By order dated 4.10.1997 (Annexure-P/3), the Collector, Raigarh passed an order withdrawing the regular pay scale to such employees who have been appointed after 31.12.1988. Pursuant to the said order of Collector, the petitioner was brought to the Collector rate from the month of October, 1997. He was subsequently regularized vide order dated 9.9.2008 and since thereafter he is getting regular pay scale.
3. The petitioner had earlier preferred WPS No.809/2012 claiming similar relief. The said writ petition was disposed of vide order dated 20.11.2012 holding thus in paragraphs 3 to 8:-

“3. There is no dispute that the petitioner was initially appointed on daily wages basis on 01.02.1991 and thereafter, the benefit of regular pay scale was extended to the petitioner on 01.02.1994. The said pay scale was withdrawn pursuant to the circular dated 04.10.1997, in which, it has been provided that the regular pay scale be granted to those employees who joined the service prior to 01.01.1984 and completed three years of service as on 01.04.1987. In the instant case, the petitioner was appointed in the year 1991 i.e. much after the prescribed cutoff date i.e. 01.04.1987.

4. The sole contention of the petitioner that since the pay fixation was done not on account of any misrepresentation or fraud on the part of the petitioner

and the same was also not recovered immediately, the authorities cannot recover the payment which according to the authorities are excess payment.

5. The Supreme Court in **Chandi Prasad Uniyal and Ors. v. State of Uttarakhand and Ors.**¹, relied on by the State counsel, observed as under :

“16. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (2009 AIR SCW 1871) (supra) and in Col. B.J. Akkara (retd.) case (2006 AIR SCW 5252) (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.”

6. There is no quarrel on the point that no employee is entitled to retain the public money as a matter of right. However, recovery of payment, which is punitive in

¹ 2012 AIR SCW 4742

nature, cannot be passed without following the basic principles of natural justice. According to the learned counsel for the petitioner no notice has been given to the petitioner to put forward his case as to whether the amount was excess, as the decision was taken by the authorities ex parte, which is not permissible under the provisions of law.

7. Be that as it may, it is a trite law that no order prejudicing the interest of an employee can be passed without affording an opportunity of hearing. It is not the case of respondents that opportunity of hearing was afforded to the petitioner, and the present case is such wherein notice of hearing is to be dispensed with.

8. As a result, the authorities are directed to consider case of the petitioner on a representation made by the petitioner, if any, in accordance with law, on its own merit and pass appropriate order expeditiously. No order as to costs.”

4. Thus, it is explicit that the petitioner's prayer for grant of regular pay scale for the relevant period was not considered, however, his prayer for not making recovery of the amount paid to him prior to 4.10.1997 was considered and he was allowed to make representation. It is this representation which has now been rejected by the impugned order.
5. It is argued that the petitioner was granted a particular pay scale which was withdrawn without opportunity of hearing, therefore, the same is illegal. It is also argued that the petitioner's case is similar to the case of

Sant Kumar & Ors Vs. State of Chhattisgarh (WP No.2125/2002) against which the SLP has been dismissed by the Supreme Court.

6. Per contra, learned State counsel would submit that the petitioner was daily wager in the Contingency Paid Establishment, however, he was never appointed in terms of the procedure prescribed for such appointment under the Workcharged Contingency Paid Employees Recruitment and Conditions of Services Rules, 1975 (for short 'the Rules, 1975'). Therefore, the petitioner was not entitled for fixation of his pay after completing 3 years service. It is also submitted that the petitioner's case is not similar to the case of **Sant Kumar**, referred to above.
7. Perusal of the papers annexed with the Writ Petition would indicate that the petitioner had earlier preferred WPS No.809/2012 wherein he had not prayed for quashment of the order dated 4.10.1997. The petitioner only prayed for grant of regular pay scale during the period 4.10.1997 to 9.9.2008. However, even that relief was not allowed in favour of the petitioner. Liberty was reserved in favour of the petitioner to make representation in view of his contention that is reflected in paragraph-4 of the order passed in the earlier writ petition. Thus, the representation confined recovery of the amount already paid to the petitioner as regular pay scale prior to passing of the order dated 4.10.1997. As a matter of fact, the petitioner wants payment of regular pay scale for the period 4.10.1997 to 9.9.2008 without assailing the Collector's order dated

4.10.1997. Thus, prayer for grant of regular pay scale for the said period not only suffers from delay and laches but is also hit by the principle of *res judicata*.

8. Even otherwise, the petitioner was allowed regular pay scale by referring to the State Government's circular dated 22.11.1988 (Annexure-R/1). In the said circular, it was mentioned that such employees who were appointed in the Workcharged and Contingency Paid Establishment prior to 1.1.1984 and have completed service of 3 years or more on 1.4.1987 be granted regular pay scale. The petitioner having not been appointed prior to 1.1.1984 or prior to 31.12.1988 as per the circular dated 15.12.1991 (Annexure-R/2), at the first instance, he was not entitled for regular pay scale. In the subsequent circular dated 15.12.1992, it is clearly mentioned that regular pay scale be allowed in favour of such contingency paid daily wagers who are regularized in the Workcharged and Contingency Paid Establishment and have completed 3 years service or more. The petitioner having never been appointed as per the procedure prescribed under the Rules, 1975 and having not been appointed prior to 31.12.1988, he was not at all eligible for grant of regular pay scale.

9. In respect of the Collector's order dated 4.10.1997, the Coordinate Bench has passed order in WPS No.4540/2009 (Shyam Lal Sahu Vs. State of Chhattisgarh & Others). However, in view of the petitioner's earlier writ petition, his case is clearly distinguishable and the order

passed in Shyam Lal Sahu, referred to above, would not govern the petitioner's case as the order passed in the petitioner's own writ petition would bind him being the order passed in *lis inter partes*.

10. For the foregoing, the writ petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve