

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 146 of 2011

1. Prakash Dewangan S/o Shri Somnath Dewangan, aged about 53 years, R/O Ward No.2 Street 4 Near Police Chowki Kailash Nagra Kawardha Distt. Kabirdham CG.

---- Petitioner

Versus

1. State Of Chhattisgarh, through the Secretary, Cooperative Department, DKS Bhawan, Raipur CG.
2. The Registrar Co-operative Societies Raipur CG.
3. Chhattisgarh State Vanopaj Sangh Maryadit Through The Managing Director Raipur CG.
4. Zila Laghu Vanopaj Sahakari Union, Kawardha, through the Managing Director, District Kawardha CG.
5. Divisional Forest Officer Kabirdham CG
6. Chhattisgarh Rajya Laghu Vanopak (Vyapar & Vikas) Sahakari Sangh Maryadit Through The Working Director A-25 VIP Estate Khamharidhi Sahankar Nagra Raipur CG
7. Conservator Of Forest & Officiated General Manager Forest Circle Durg Dist. Durg CG.

---- Respondent

For Petitioner	Shri Prateek Sharma, Advocate
For Respondent/State	Shri Shashank Thakur, Govt. Advocate
For Respondents No. 3, 4, 6 & 7	Shri A.S. Kachhawaha & Ms. Pushpa Dwivedi, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

19/06/2015

Heard learned counsel for the parties.

1. In this petition under Article 226 of the Constitution of India the petitioner is challenging the orders dated 2-2-2007 & 22-9-2010 passed by the respondents whereby a sum of Rs.72,616/- has been recovered from him without issuing any show cause notice or conducting any enquiry.
2. At the relevant time, the petitioner was working as Co-operative Inspector-cum-Accountant and was on deputation with the District Minor Forest Produce Cooperative Union, Kawardha. A theft occurred in the office during the intervening night of 14th/15th September, 2006 for which the petitioner lodged a report informing the police that the said amount has been stolen from the locked almirah of the office. In the investigation carried by the Kabeerdham police in crime No.380/2006 nothing can be unearthed and the matter was closed.
3. Learned counsel for the petitioner would submit that the impugned orders have been passed in utter disregard of the principles of natural justice inasmuch as proper and effective opportunity of hearing has not been afforded to him much less conduct of any regular enquiry. He would further submit that an explanation was sought from the petitioner by the Divisional Forest Officer, Kabeerdham, but a notice specifically mentioning that the amount shall be recovered from him was never issued or served upon him.
4. On the other hand, learned counsel appearing for the respondents No.3, 4, 6 & 7 would submit that the petitioner was having the charge of

the Accountant of the District Union, Kabeerdham and retained the amount for a longer period than the period for which it should have been retained by him and because of his negligence the amount was lost and, as such, the recovery has been made against the petitioner. Learned counsel would further submit that the notice was issued to the petitioner vide Annexures – R3/2 & R3/4 seeking his explanation, therefore, principles of natural justice have not been violated.

5. A reading of the documents Annexures – R3/2 & R3/4 would indicate that the Divisional Forest Officer, Kabeerdham, sought explanation from the petitioner, but there was no mention in the letters that the amount shall be recovered from the petitioner in the event the explanation is found unsatisfactory. There is no other communication issued to the petitioner mentioning that he is responsible for the loss, therefore, the amount shall be recovered from him.
6. The enquiry to fasten the charge of misconduct on the petitioner much less a regular enquiry was neither contemplated nor conducted against the petitioner. Recovery of the amount can be made from the petitioner only when a finding of negligence is recorded against him in an enquiry.
7. Since the petitioner was not noticed nor any enquiry was conducted before passing the impugned orders and, as such, the same have been passed in violation of principles of natural justice.
8. Be that as it may, no order visiting with civil (evil) consequences be passed without affording an opportunity of hearing.

9. It is well settled principle of law that if any order visits with civil consequences, the same is vitiated, if passed without affording an opportunity of hearing to the employee(s). (See: *Shrawan Kumar Jha and others v. State of Bihar and others*¹, *D.K. Yadav v. J.M.A. Industries Ltd. & Others*², *Basudeo Tiwari v. Sido Kanhu University & Others*³, *Canara Bank & Others. v. Debasis Das & Others*⁴, *Vivekanand Sethi v. Chairman, J&K Bank Ltd. & Others*⁵, *Mohd. Sartaj & another v. State of U.P. & Others*⁶, *Inderpreet Singh Kahlon & others Vs. State of Punjab & others*⁷, *Ashok Kumar Sonkar v. Union of India & Others*⁸, *State of Manipur & Others v. Y. Token Singh & Others*⁹, *Jaswant Singh Pratap Singh Jadeja v. Rajkot Municipal Corporation & another*¹⁰, *Nehru Yuva Kendra Sangathan v. Mehbub Alam Lashkar*¹¹ *State of Punjab & Others v. Constable Avtar Singh (Dead) Through LRs.*¹² and *Prakash Ratan Sinha v. State of Bihar & Others*¹³).

1 AIR 1991 SC 310
2 (1993) 3 SCC 259
3 AIR 1998 SC 3261
4 (2003) 4 SCC 557
5 (2005) 5 SCC 337
6 (2006) 2 SCC 315
7 AIR 2006 SC 2571
8 (2007) 4 SCC 54
9 (2007) 5 SCC 65
10 (2007) 10 SCC 71
11 (2008) 2 SCC 479
12 (2008) 7 SCC 405
13 (2009) 14 SCC 690

10. For the foregoing, the impugned orders dated 2-2-2007 (Annexure – P/1) & 22-9-2010 (Annexure – P/2) are quashed and the amount of Rs.72,616/-, which has already been recovered from the petitioner, be refunded to him within a period of four weeks from today. However, liberty is reserved in favour of the respondents to proceed against the petitioner after following the principles of natural justice.
11. As an upshot, the writ petition is allowed to the extent indicated above. No order as to costs.

Sd/-
Prashant Kumar Mishra
Judge

Gowri