

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2166 of 2016

Ashish Shukla, S/o Shri Rudranarayan Shukla, aged about 43 years, Occupation Sub-Engineer, Nagar Nigam, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. State of C.G., Through Secretary, Nagriya Nikaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)

2. Commissioner, Nagar Nigam, Raipur, District Raipur (C.G.)
---- Respondents

For Petitioner: Mr. T.K. Jha, Advocate.

For State/Respondent No.1: -

Mr. Dheeraj Kumar Wankhede, G.A.

For Respondent No.2: Mr. Anumeh Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/10/2016

1. Return has been filed by respondents No.1 and 2.
2. The matter is heard finally with the consent of parties.
3. The petitioner was appointed as Sub Engineer in the establishment of Municipal Corporation, Raipur on 29-5-2009 and he was given the benefit of one advance increment by order dated 27-12-2013 as his wife underwent family planning operation on 5-2-2009. The said increment has been withdrawn by order dated 6-12-2014 holding that he is not eligible for the same against which this writ petition has been

filed.

4. Mr. T.K. Jha, learned counsel appearing for the petitioner, would submit that once the benefit has been granted, it could not have been revoked without giving opportunity of hearing and it could not have been directed for recovery without giving opportunity of hearing, therefore, the impugned order deserves to be set aside.
5. Mr. Anumeh Shrivastava, learned counsel appearing for the Municipal Corporation, would submit that the petitioner was appointed on 29-5-2009 whereas, his wife underwent the said operation prior to joining of the petitioner in service, on 5-2-2009, therefore, the circular dated 18-9-2002 would not be applicable and the petitioner is not eligible for such an advance increment and as such, the increment has been withdrawn and recovery order has been directed against the petitioner.
6. I have heard learned counsel for the parties, perused the order impugned and considered the rival submissions made therein.
7. It is not in dispute that the petitioner was granted the benefit of one advance increment on account of his wife Smt. Manisha Shukla underwent family planning operation on 5-2-2009. It is also not in dispute that before passing the order dated 6-12-2004, neither the petitioner has been given an opportunity nor he has been heard before the adverse order of withdrawing

the benefit of one advance increment was passed directing recovery of so paid amount as it was granted expressly by a written order dated 27-12-2013. Be that as it may, since adverse order has been passed withdrawing one advance increment granted to the petitioner and further directing recovery of amount already paid, it could not have been done without giving at least an opportunity of hearing justifying the entitlement by the petitioner. A bare minimal opportunity of hearing ought to have been afforded to the petitioner before passing the adverse order directing withdrawal of advance increment as well as directing recovery of amount so paid. Consequently, the impugned order Annexure P-1 cannot be sustained and is hereby set aside. However, the Municipal Corporation is at liberty to proceed against the petitioner after affording an opportunity of hearing to him and pass fresh order, if so advised.

8. The writ petition is allowed to the extent indicated herein-above. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge