

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3032 of 2016

Raj Kamal Mishra, S/o Shri Chandra Bhushan Mishra, aged about 65 years, R/o Behind New Bus Stand, Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Department of Higher Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, Thana Mandir Hasod, Post Office Mantralaya, District Raipur, Chhattisgarh.
2. Commissioner, Department of Higher Education, Government Science College Campus, Raipur, District Raipur, Chhattisgarh.
3. Principal, Dau Kalyan P.G. Government College, Balodabazar, Chhattisgarh.
4. Joint Director, Treasury, Accounts & Pension, Anand Nagar, Raipur Division, Raipur, District Raipur, Chhattisgarh.
5. Additional Director, Treasury, Accounts & Pension, Indravati Bhawan, Block-I, First Floor, Naya Raipur, District Raipur, Chhattisgarh.
6. Secretary, Department of Finance, Mantralaya, Mahanadi Bhawan, Naya Raipur, Thana Mandir Hasod, Post Office Mantralaya, District Raipur, Chhattisgarh.
7. Commissioner, Directorate of Treasury, Accounts & Pensions, Finance, Anand Nagar, Raipur, Chhattisgarh.

---- Respondents

For Petitioner: Mr. Amrito Das, Advocate.

For Respondents/State: Mr. Gary Mukhopadhyay, Dy. Govt. Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/02/2017

1. The petitioner, earlier, while working on the post of Sports

Officer brought an action in this Court claiming that age of retirement of Sports Officer is 65 years and he is entitled to be retired on 28-2-2016. According to the State, he was due to retire on 28-2-2013, as he is not entitled for extension of service. By interim order of this Court dated 28-2-2013, he was allowed to continue for some time, but the writ petition was disposed of on 9-12-2014 referring the matter to the State Government for consideration for enhancement of the age of superannuation of Sports Officer. Meanwhile, the petitioner retired on 31-12-2014, as the interim order came to an end on 9-12-2014. Now, the State Government has directed for recovery of salary and dues that have been paid to the petitioner from 28-2-2013 to 31-12-2014 against which this writ petition has been filed by the petitioner claiming that he had worked on the said post by interim order of the Court and therefore the said amount cannot be recovered from him.

2. I have heard learned counsel for the parties and perused the entire material available on record with utmost circumspection.
3. Admittedly, the petitioner had worked till 31-12-2014 and he has been paid salary and all actual benefits till 31-12-2014. The State Government filed MCC against the order dated 9-12-2014 passed by a Division Bench of this Court referring the matter to the State Government and this Court by order dated 19-12-2016 has clearly held that if the petitioners (therein) have worked under the interim order, they will have to be paid for the

period they have worked. The order dated 19-12-2016 passed in the MCC states as under: -

“This application has been filed for clarification of the order dated 09.12.2014 passed in Writ Petition (S) No.5608 of 2012. The final order which has been passed needs no clarification. What is the effect of the interim order is not for this Court to give any option at this stage. If the non-applicants No.1 & 2 / writ petitioners have worked on the basis of the interim order, then the State will have to act according to law to decide what action is to be taken. If the non-applicants No.1 & 2 have worked under the interim order, they will have to be paid for the period they have worked.”

4. Apart from this, the Supreme Court in a decision in the matter of **Collector of Madras and another v. K. Rajamanickam**¹ has clearly held that period of service rendered after the date of superannuation under a decision of Court should not be counted and observed as follows: -

“3. ... For the period for which he had continued, there shall be a direction not to recover any amount paid to him during that period. In other words, his retiral benefits should be computed as if he had retired on 31-1-1993 only.”

5. Likewise, in an another decision in the matter of **State of J. & K. v. Pirzada Ghulam Nabi**², the Supreme Court has held that the petitioner is entitled for computation of his retiral benefits as if he had retired on 30-4-2001.
6. Both the above decisions have been followed by this Court in the matter of **Suraj Lal Chandra v. South Eastern Coalfields Limited and others**³.

1 (1995) 2 SCC 98

2 (1998) 9 SCC 102

3 ILR 2016 Chhattisgarh 580

7. In view of the aforesaid, I have no doubt in my mind that since the petitioner had worked for the period from 28-2-2013 to 31-12-2014 by the interim order of the Court, he will be entitled for salary and other allowances and that amount cannot be recovered from him. However, for all other purposes like retiral benefits, his actual date of retirement will be 28-2-2013. Accordingly, the impugned orders Annexures P-1 and P-2 are quashed.
8. With the above observation, the petition finally stands disposed of. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge