

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 407 of 2012**

Balkrishna Joshi S/o Late Shri Jugraj Joshi, Aged about 65 years, Retd. Chief Municipal Officer, at present R/o Balani Chowk Mungeli, District Mungeli, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through: the Director of Directorate, Sthaniya Nidhi Sampariksha, B-99, Main Road, Samta Colony, Raipur, District Raipur Chhattisgarh
2. Commissioner, Sthaniya Nidhi Sampariksha, Raipur, District Raipur Chhattisgarh
3. Up-Sanchalak, Sthaniya Nidhi Sampariksha, Raipur, District Raipur Chhattisgarh
4. Collector, Rajnandgaon, District Rajnandgaon, Chhattisgarh
5. Deputy Director, Sthaniya Nidhi Sampariksha, Rajnandgaon, District Rajnandgaon, Chhattisgarh
6. Deputy Director, Nagariya Prashashan and Development Department, Raipur, District Raipur Chhattisgarh
7. Chief Municipal Officer, Nagar Panchayat, Dongargaon, District Rajnandgaon, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Sanjay Pathak, Advocate under instructions of Mr. Awadh Tripathi, Advocate
For State	:	Ms. Astha Shukla, Panel Lawyer
For Respondent No.7	:	Mr. R.S. Baghel, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/07/2018**

1. The challenge in the present writ petition is to the order dated 07.08.2007, which is an order of recovery issued by the respondents against the petitioner to the tune of Rs.72,425/- and it has been ordered to be recovered from the petitioner.
2. The challenge to the impugned order is on the ground that before issuance of impugned order no detailed inquiry whatsoever has been conducted by the respondents. It is also the contention that even a

preliminary enquiry has not been conducted taking into confidence the petitioner by the respondents.

3. The petitioner further is also of the view that he has retired from service on 30.04.2005 and the impugned order has been passed on 07.08.2007 i.e. almost about 2 ½ years after the petitioner has superannuated and for this reason alone the recovery order is impermissible under law. He further submits that even otherwise when the show cause notice (Annexure P/7) was issued to the petitioner, he had categorically replied to the show cause notice and the authorities concerned do not seem to have discussed the reply filed by the petitioner and have straight away passed the impugned order on 07.08.2007, which again is a non-speaking order deserving to be quashed.
4. The counsel appearing for the respondents tried to justify their act to the extent that on account of the misdeed on the part of the petitioner, the department has sustained a loss to the tune of Rs.72,425/-. According to the respondents, the petitioner being the Chief Municipal Officer at the relevant point of time of Nagar Panchayat, Dongargaon, District Rajnandgaon was suppose to get the auction fees collected from the auction made pertaining to the market at Dongargaon, which the petitioner has not effectively carried out and in the process the department has sustained loss to the tune of Rs.72,425/- and therefore the department is entitled to recover the loss caused.
5. Perusal of the record would show that the respondents for the same loss had also filed a civil suit, moreover admittedly the petitioner stood retired on 30.04.2005 and the impugned order of recovery seems to have issued after about 2½ years after the retirement. What further also

is reflects that except for the issuance of the charge sheet (Annexure P/7) to which the petitioner had given a detailed reply there does not seem to be either a preliminary investigation conducted or a departmental enquiry conducted giving the petitioner an opportunity of defense to justify his conduct or act.

6. Though the respondents have in their reply stated that the action after an inquiry is conducted, but the reply filed by either of the respondents are silent so far as the manner in which the inquiry was conducted except for issuance of Annexure P/7 and P/9.
7. What is relevant at this juncture to note is that in the reply to the show cause notice, the petitioner had denied the allegations which have been leveled against the petitioner and has also given justification so far as non-collection of the auction fees for the relevant period.
8. Under the circumstances, when there is a denial of facts by the delinquent employee, the least which was expected by the department was to conduct an inquiry in which the petitioner would have also got an opportunity to defend himself. Moreover the department for recovering the loss sustained had also preferred a civil suit seeking money from the concerned contractor.
9. Though the order under challenge is an order of recovery, but imposition of recovery also has the effect of a minor punishment. The Hon'ble Supreme Court in the case of ***O.K. Bhardwaj v. Union of India & Ors., 2001 (9) SCC 180*** and ***State of Bihar & Anr. v. Lakshmi Shankar Prasad, 2002 (10) SCC 351***, wherein in the both the cases it has been envisaged that even if the authorities concerned intend to impose minor punishment there has to be reasons to be recorded and

moreover when the charges levelled against an employee being factual in nature and further there being a categorical denial on the part of the delinquent employee so far as these factual averments are concerned, an enquiry would be must before imposing the punishment. In the case of **O.K. Bhardwaj** (supra) in paragraph 3 of the judgment it has been held as under:

“(3) While we agree with the first proposition of the High Court having regard to the rule position which expressly says that “withholding increments of pay with or without cumulative effect” is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.”

10. In the case of **“Raj Kapoor Singh Parihar vs. State of Madhya Pradesh & Others, 2014 LawSuit (MP) 196”** WP No. 2760/2013, decided on 06.03.2014, in paragraph No.9 the Madhya Pradesh High Court has held as under:

“9. By the impugned punishment order, recovery of a huge amount is directed against the petitioner, which entails civil consequences. It was obligatory on the part of the respondents to assign reasons for the same. The reasons are held to be heartbeat of 'conclusion' by the Supreme Court. It is emphasized that in judicial, quasi-judicial and administrative orders, the authorities must assign reasons. This view is taken by Supreme Court in

***Kranti Associates Private Limited V. Masood Ahmed
Kha, 2010 9 SCC 496.”***

11. Given the aforesaid facts, this Court is of the opinion that the impugned order is not sustainable, firstly on the ground that the same having being issued after about 2 ½ years after the date of retirement, which in the light of the judgment of the Hon'ble Supreme Court in the case of ***“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”*** reported in ***2015 AIR SCW 501*** becomes impermissible under law. The impugned order also is bad in law for the reason that what ever enquiry that is said to have been conducted by the respondents was behind the back of the petitioner in as much as he was not taken into confidence while the inquiry, if any, was being conducted.
12. The impugned order thus deserves to be and is accordingly set-aside/quashed consequences to follow.
13. The respondents are forthwith directed to refund the entire amount back to the petitioner, reserving the right upon the respondents if rule permits to proceed further in accordance with law giving an opportunity of hearing to the petitioner.

Sd/-
(P. Sam Koshy)
Judge