NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3575 of 2013

Santosh Kumar Roy S/o Late Shri M.L.Roy, aged about 62 years, Working as Multi Purpose Health Supervisor, Retired on 21/11/2011, From Sector – Seoni, Community Health Center, Baloda District Janjgir Champa, Chhattisgarh, R/o Sindhi Colony, Gurunanak Road, Police Station Janjgir, District Janjgir-Champa, Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Health, Mahanadi Bhawan, Mantralaya, Naya Raipur (C.G.).
2. Director Health Services, Raipur (C.G.).
3. Chief Medical and Health Officer, District Janjgir Champa (C.G.).
4. District Treasurer, District Janjgir-Champa (C.G.).
5. Block Medical Officer, Community Health Center, Balouda, District Janjgir-Champa (C.G.).
6. Joint Director, Treasury Account and Pension Department, Raipur Division, Raipur (C.G.).

---Respondents

For petitioner	:	Shri Aman Tamboli, Advocate.
For State	:	Shri Adhiraj Surana, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/04/2018

1. The grievance of the petitioner in the instant Writ Petition is to the action on part of the respondents in recovering the amount of Rs.2,11,977/- from the G.P.F. account payable to the petitioner on his superannuation.

2. The facts of the case in brief is that, the petitioner while discharging duties as a Multi-Purpose Health Supervisor was as per the date of birth entered in the service record to be retired with effect from 31/12/2010.

3. However, in the service record, there was some manipulation made which would show the petitioner's date of retirement entered as 31/12/2011 instead of 31/12/2010.

4. On the basis of the said entry made so far as the date of retirement is concerned, the petitioner was permitted to continue in service beyond 31/12/2010 which was his actual date of retirement and he continued to work on the said post till 21/11/2011.

5. Thereafter the services of the petitioner was discontinued declaring him to have superannuated with effect from 31/12/2010 onwards. The retiral dues and other pensionary benefits were also released to the petitioner accepting his date of retirement to be 31/12/2010.

6. The respondents in between have issued an order of recovery for an amount of Rs.2,11,977/- from the dues payable to the petitioner i.e. the salary which was made to the petitioner in between for the services rendered by him during January-2011 to 21/11/2011.

7. The said action was earlier challenged in the Writ Petition that was WPS No.158/2013 which was disposed off by this Court on 08/04/2013 whereby the respondents were directed to conduct an enquiry in respect of the alleged tampering of documents by the petitioner for availing extended period of service beyond 31/12/2010.

8. Subsequently, it is said that an enquiry was conducted and it was found that the petitioner somehow managed to get the date of retirement tampered in the service record by use of letter dated 07/10/2010 wherein a seal of the Block Education Officer was allegedly used by the petitioner for the date of retirement being corrected from 31/12/2010 to 31/12/2011.

9. Thereafter, the respondents have issued Annexure-P/2 dated 09/10/2013 whereby it has been blamed that the petitioner has played fraud with the respondents and as a consequence an amount of Rs.2,11,977/- has been recovered from the G.P.F. account payable to the petitioner.

10. It is this action of deduction from the G.P.F. account which the petitioner has challenged in the present Writ Petition.

11. The undisputed facts in the instant case is that the petitioner was working as a Multi-Purpose Health Supervisor with the respondents. The date of superannuation as per the service record was 31/12/2010. However, due to typographical or a clerical error on part of the respondents, the date of superannuation got entered as 31/12/2011 instead of 31/12/2010 as is reflected from the document Ex-P/3 dated 17/09/2010.

12. The only allegation which the respondents have made against the petitioner is that knowing fully the fact that the petitioner was to superannuate on 31/12/2010, he has not brought this fact to the notice of the respondents and as by virtue of Ex-P/3 dated 17/09/2010, he continued in employment till 21/11/2011. Thereby he has played a fraud with the

respondents for which the salary which he has drawn during the intervening period has been ordered to be recovered from him.

13. Another fact which cannot be lost sight of is that the respondents though have conducted an enquiry after the disposal of earlier Writ Petition i.e. WPS No.158/2013 which was disposed off on 08/04/2013, but no formal order has been passed so far as the recovery to be made from the petitioner is concerned. The only observation which has been made by the respondents is that since the petitioner has deliberately suppressed material date of retirement from the respondents, the recovery of the salary paid to him was justified and does not warrant any interference. This as such was not sufficient.

14. This Court while disposing off the earlier Writ Petition i.e. WPS No.158/2013 on 08/04/2013 has held that the order dated 21/11/2011 by which the order of recovery was made to be illegal, the respondents were thus incumbent to pass a specific order after the enquiry was conducted. Thereafter the finding of the enquiry and the action proposed was supposed to be intimated to the petitioner which would have provided him the liberty of challenging the same if he was still aggrieved by it. There does not seem any such action to have been taken by the respondents.

15. Another aspect which cannot be lost sight of is that as per Annexure-P/2 dated 09/10/2013, the respondents themselves have stated that the petitioner has been permitted to work because of the clerical error in the order dated 17/09/2010 which again would reflect that it was not the petitioner who could be blamed for the clerical error.

16. Moreover, for this entire period of 11 ½ months, the petitioner has infact discharged his duties and it is anybody's right for salary if he has discharged his duties during the intervening period.

17. It is not a case that the petitioner has not worked during the said period and if the petitioner has worked for the respondents during the intervening period, he is entitled for the salary of the said period.

18. The only thing for which the petitioner would not be entitled would be that the said period would not be counted as a qualifying service determining the retiral and pensionary benefits and the said period would also not be counted as period spent on duty.

19. Thus, this Court is of the opinion that the petitioner would be entitled for refund of the amount of Rs.2,11,977/- deducted from the G.P.F. account of the petitioner. The same should forthwith be released to the petitioner.

20. However, the petitioner would not be entitled for any interest on the said amount.

21. It is expected that the respondents shall refund the said amount to the petitioner at the earliest preferably within a period of 3 months from today.

22. The Writ Petition accordingly stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit