

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1482 of 2015

W.D. Chandrawansi, S/o Late Saligram Chandrawansi, Aged about 78 years, Occupation Retired First Grade Clerk, PWD (Electrical/Mechanical), Circle Bilaspur, R/o Koni, Bilaspur, Police Station Koni, Bilaspur (C.G.)

---- Petitioner

Versus

1. The State of Chhattisgarh, Through the Principal Secretary, Public Works Department, Mahanadi Section, New Mantralaya, New Raipur (C.G.)
2. The Superintending Engineer, PWD, (E/M), Bilaspur Circle, Opposite District and Session Court, Bilaspur (C.G.)
3. The Executive Engineer, PWD, (E/M), Division Bilaspur, Near Old Composite Building, Bilaspur (C.G.)
4. The Executive Engineer, PWD (B/R), Division-I, Bilaspur, Near Old Composite Building, Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. Sunil Kumar Soni, Advocate.
 For Respondents/State: Mr Dilman Rati Minj, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/01/2018

1. Heard.
2. Learned counsel for the petitioner submits that the petitioner retired from service on 31-7-1995 and his provisional pension was fixed on 31-10-1995 and on 23-2-2005, ₹ 2,43,002-50 ps. have been recovered from the retiral dues of the petitioner without giving opportunity of hearing to him.
3. Learned State counsel would support the impugned action.
4. The point is no longer in dispute. A coordinate Bench of this Court in

the matter of **Abdul Saban Khan v. State of Chhattisgarh and others**¹, decided on 11-9-2012, held as under: -

“6. The next important issue which requires determination by this Court is whether any kind of dues, which is recoverable under Rule 65 or Rule 66 of the Rules of 1976 requires any opportunity of hearing. True it is that neither Rule 65 nor Rule 66 contains any specific provision regarding issuance of any show cause notice and opportunity of hearing to the Government Servant in a case where the Government Servant disputes his liability towards such recovery. However, in the very nature of exercise required to be undertaken, the result would be that in case, any amount is found due and recoverable, the Government Servant is required to pay that amount or get it adjusted from amongst the retiral dues payable to him. Therefore, civil consequences ensue. If that is the consequence which has to follow in case of recovery under Rule 65 or Rule 66, even if there is no specific provision contained in those rules, it is implicit in the very nature of power conferred on the Government that the Government Servant should be heard before taking any such decision with regard to recovery. The rule does not prescribe any procedure for that purpose. Therefore, at least a notice, informing the Government Servant that certain amount is recoverable against miscellaneous advances, is required to be given and his reply is to be obtained. The competent authority is thereafter required to apply its mind to the reply and then take appropriate decision in the matter as to whether any recovery is due and if so, what is the amount due and recoverable, it is only after such a decision, that recovery under Rule 65 or Rule 66 could be made. That is so because, in all forms of action, where exercise of public power results in civil consequences, principles of natural justice become

1 MANU/CG/0665/2012

applicable irrespective of whether or not rules enjoin such duty on the repository of the public power. In the case of Mohinder Singh Gill and another Vs. The Chief Election Commissioner New Delhi and others, MANU/SC/0209/1977 : AIR 1978 S.C. 850, it was held -

76. We have been told that wherever the Parliament has intended as hearing it has said so in the Act and the rules and inferentially where it has not specified it is otiose. There is no such sequatur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligations.

In a subsequent decision in the case of Mangilal Vs. State of Madhya Pradesh, MANU/SC/0001/2004 : 2004 (2) SCC 447, it was held -

10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper

discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See *Swadeshi Cotton Mills v. Union of India* MANU/SC/0048/1981 : (1981) 1 SCC 664). Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. There are a means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are: notice of the case to be met, and opportunity to explain.

7. The principles laid down in the aforesaid decisions clearly show that wherever civil consequences ensue, the compliance of principles of natural justice is indispensable even though there is no specific provision in that regard, in the provision of law under which power is being exercised. ...”
5. Admittedly, in the present case, no opportunity of hearing was given to the petitioner before deducting the said amount. The notices given on 12-2-1993 and 3-3-1993 cannot be said to be the notice, as the petitioner retired on 31-7-1995. Though notices are said to be issued, but not specific notice clearly indicating that an amount of ₹ 2,43,002-

50 ps. has to be recovered, has not been served upon the petitioner. Therefore, deduction of said amount from the reitral dues of the petitioner is bad and unsustainable in law. Accordingly, the order deducting ₹ 2,43,002-50 ps. from the retiral dues of the petitioner is hereby set aside. However, the respondents would be at liberty to give show cause notice to the petitioner against the amount alleged to be due and recoverable and may decide the matter receiving reply of the petitioner, in accordance with law and make appropriate recovery as per Rule 65 of the Chhattisgarh Civil Services (Pension) Rules, 1976.

6. With the aforesaid observation, the writ petition stands finally disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge