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HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1487 of 2008**

Vinod Kumar Verma, S/o. Late Shri V.C. Verma, Aged about 52 years, R/o. H-1 (New) Government Polytechnic Colony, Durg, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Department Of Technical Education, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. Director, Directorate of Technical Education, Raipur, Chhattisgarh
3. Additional Director, Directorate of Technical Education, Raipur Chhattisgarh
4. The Principal, Government Polytechnic, Durg, Chhattisgarh

----Respondents**AND****WPS No. 2411 of 2009**

Vinod Kumar Verma, S/o. Late Shri V.C. Verma, Aged about 53 years, Employed as Stores Clerk, Government Polytechnic, Durg, Resident at H/1, Polytechnic Colony, Durg, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Department Of Technical Education, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. Director, Directorate of Technical Education, Govt. Girls Polytechnic Complex, Byron Bazar, Raipur, Chhattisgarh
3. The Principal, Government Polytechnic, Durg, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Mr. R.K. Gupta, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****27/08/2018**

1. These are two writ petitions of the same petitioner. In WPS No. 1487/2008 it is the order of reversion (Annexure P/1) dated 07.07.2006, which is under challenge. The WPS No. 2411/2009 is the consequential action which is under challenge i.e. the order

Annexure P/8 dated 29.07.2008 and Annexure P/9 dated 04.02.2009. Annexure P/8 is an order seeking recovery of the excess amount paid to the petitioner on account of alleged wrong appointment/promotion given to the petitioner and Annexure P/9 is the order whereby the petitioner has been fixed on the pay-scale payable to the Stores Clerks. Since the matter arises out of the same cause of action, this Court proceeds to decide both the writ petitions by a common judgment.

2. Before going into the implications of the impugned order (Annexure P/1), it would be relevant to give the factual matrix of the case, which led to the issuance of the impugned order and the filing of the present writ petition.
3. The petitioner was appointed as a Lab Technician under the respondents way back on 24.01.1983. Subsequently the petitioner has been appointed as a LDC w.e.f. 01.11.1983. On which post the petitioner continued till he was promoted vide Annexure P/5 dated 19.03.1987 on the post of Stores Clerk. The petitioner was further promoted on the post of Accountant w.e.f. 21.06.2005 vide Annexure P/6.
4. Having putting about one years of service on the promoted post of Accountant, the respondents issued the impugned order on 07.07.2006 firstly reverting the petitioner from the post of Accountant back to the post of Stores Clerk, secondly vide the same order it was held that petitioner has been wrongly given appointment as an LDC w.e.f. 01.11.1983, whereas he became entitled for the same only w.e.f. 08.06.1995. In the same order it

was also held that the subsequent promotion granted to the petitioner as Stores Clerk w.e.f. 19.03.1987 also is bad in law and that he was entitled for the same only w.e.f. 09.06.2000. It is this order Annexure P/1, which is under challenge in the present writ petition.

5. The counsel for the petitioner submits that the impugned order Annexure P/1 is bad in law for the reason that firstly the authorities concerned have not appreciated the fact that the order of appointment (Annexure P/3) dated 01.11.1983 did not stipulate at any point of time of the petitioner requiring to pass the typing examination.
6. It was also submitted by the counsel for the petitioner that the recruitment rules as is stood in the year 1983 also did not envisage a clause requiring the passing of the typing examination mandatory for appointment on the post of LDC. The counsel for the petitioner therefore submits that the appointment so granted cannot be said to be bad at a later stage of time.
7. Last, but not the least, the counsel for the petitioner challenges the impugned order on the ground that the same is in blatant violation of the principles of natural justice. According to the counsel for the petitioner, undisputed petitioner has been discharging the duties of an LDC since 01.11.1983. He has been drawing the salary of LDC all along till he was promoted as a Stores Clerk in 1987 and was started drawing the benefits attached to the said promoted post and he also meanwhile got further promotion on the post of Accountant in June, 2005, of which post also the petitioner started deriving all

the benefits attached to the post and abruptly by the impugned order, all these benefits have been recalled and the petitioner has been put to substantial loss by the impugned order. This order has been passed without affording any opportunity of hearing to the petitioner in as much as no show cause notice or an opportunity of representation was provided to the petitioner before passing the impugned order is concerned. According to the petitioner the impugned order deserves to be set-aside/quashed on this very ground alone.

8. Per contra, the learned Deputy Advocate General trying to defend the action on the part of the respondents submits that the impugned order is nothing but a rectification of an error which had been detected at a later stage. According to the learned State counsel, it is a case where the petitioner at the first instance was erroneously granted appointment on the post of LDC, which he could not have got, as he did not possess the typing passed qualification, which was mandatorily required.
9. It was further contended that the respondents having taken a lenient view has passed the impugned order protecting the employment of the petitioner by giving the benefits to the petitioner of the exemption from passing the typing on his attaining the age of 40 and thereby he was treated appointed as an LDC from the date he attained the age of 40 i.e. on 08.06.1995. The subsequent promotion to the post of Stores Clerk was also provided to him on completion of 5 years of service on the post of LDC i.e. w.e.f. 09.06.2000. Thus the petitioner would not be thereafter entitled for

further promotion on the post of Accountant for want of requisite length of service on the post of Stores Clerk and thus according to the State counsel, there is no illegality committed by the respondents while passing the impugned order.

10. The counsel for the respondents refers to Annexure R/3, which is the schedule attached to the recruitment rules, which provides for passing of the typing examination as a mandatory eligibility criteria. The State counsel also refers to Annexure R/2 dated 25/28.02.1986 whereby an intimation by the department was issued to the petitioner intimating him that in the past on 06.11.1984 he was directed to clear the Hindi typing examination which he till the issuance of Annexure R/2 had not obtained and that he was granted a further time up till another period of one year starting from 01.08.1985 to obtain the requisite qualification, within which also it appears that the petitioner could not obtain, therefore the petitioner lacked the basic minimum eligibility criteria for the post of LDC and hence the petitioner could not have been considered for promotion to the post of Stores Clerk in the year 1987 and for the subsequent promotion in the year 2005 on the post of Accountant.
11. Nonetheless, what is undisputed is the fact that the petitioner was appointed as LDC on 01.11.1983. The petitioner continued on the said post till he was promoted as a Stores Clerk on 19.03.1987 and thereafter he was further promoted as an Accountant on 21.06.2005. On all these promoted posts, the petitioner assumed his duties and started duties and also availed the benefits attached to the respective promoted posts for a considerable period.

12. It is settled position of law that any action or an order of the respondents/State Government having an adverse civil consequences particularly in respect of the service conditions attached to an employee is passed, the minimum or the least that is required was an opportunity of hearing to the concerned employee.
13. Undisputedly, in the instant case the petitioner has not been issued with any show cause notice, nor was the petitioner given an opportunity to represent to the authorities in the department before issuance of the impugned order.
14. Given the said facts, only on the ground of the impugned order having being issued without affording any opportunity of hearing, the same deserves to be and is accordingly set-aside, reserving the right of the petitioner to pass a suitable order after granting an opportunity of hearing to the petitioner in this regard. While passing the said order, the respondents would also take into consideration, whether on 01.11.1983, when the petitioner was initially appointed as an LDC, the recruitment rules as is stood on 01.11.1983 did have an eligibility criteria of having passed the typing examination.
15. With the aforesaid observations, the present writ petition stands allowed with consequences to follow.
16. As a consequence of WPS No. 1487/2008, whereby the impugned order (Annexure P/1) dated 07.07.2006 having being set-aside/quashed by this Court by implication the subsequent writ petition i.e. WPS No. 2411/2009, where an order of recovery dated 29.07.2008 (Annexure P/8) for recovering the excess payment made to the petitioner during the intervening period also deserves

to be and is accordingly set-aside/quashed. As regards the challenge to Annexure P/9 is concerned, the same would also not be sustainable, reserving the right of the Government to take appropriate decision after the outcome of the subsequent decision which the State Government may take, if any.

17. If the respondents intend to take any action, let an appropriate decision after due opportunity of hearing be given to the petitioner be taken within a period of 4 months from the date of receipt of the order of this Court.

Sd/-
(P. Sam Koshy)
Judge

Ved