

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1950 of 2013

Sukhram Dhruwa S/o Late B.R.Dhruwa, aged about 63 years, R/o Bangalipara, Sarkanda, Police Station Sarkanda, Tahsil Bilaspur, Civil and Revenue District Bilaspur (C.G.).

---Petitioner

Versus

1. South Eastern Central Railway, Bilaspur, through the Chief Security Commissioner, Rail Protection Force, South Eastern Central Railway, Bilaspur (C.G.).
2. Staff Officer, Office of the Chief Security Commissioner, Rail Protection Force, South Eastern Central Railway, Bilaspur (C.G.).
3. Deputy Chief Security Commissioner, Chief Security Commissioner, Rail Protection Force, South Eastern Central Railway, Bilaspur (C.G.).

---Respondents

For petitioner	:	Shri F.S.Khare, Advocate.
For respondents	:	Shri H.S.Ahluwalia, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/04/2018

1. The challenge in the present Writ Petition is to the Annexures – P/1 and P/2 dated 14/07/2009 and 12/10/2012 respectively.
2. The facts of the case in brief is that the petitioner was working as an Assistant Sub Inspector with the Railways Protection Force. The petitioner attained the age of superannuation and stood retired on 30/04/2009. After his retirement, the order Annexure-P/1 was passed whereby it was ordered for recovering an amount of Rs.1,54,353/- from the Death Cum Retirement Gratuity payable to the petitioner on account of the period between 22/01/2008 to 29/01/2009 and 30/01/2009 to 30/04/2009, the petitioner was

on Private Medical Certificate (PMC) and therefore the said period was declared as Leave Without Pay (LWP) and the salary granted for the said period has been ordered to be recovered vide Annexure-P/1.

3. This order Annexure-P/1 dated 14/07/2009 was subjected to challenge in a Writ Petition earlier filed i.e. WP No. 4157/2009. The said Writ Petition stood partly allowed vide order dated 20/07/2010 whereby this Court in paragraph 11 has held that the period between 30/01/2009 to 30/04/2009 has to be treated as Leave Without Pay and the said action stood affirmed by the High Court in the said Writ Petition.

4. However, the action for recovering the salary for the period from 22/01/2008 to 29/01/2009 was ordered to be bad in law and the Writ Petition was disposed off with liberty to pass a fresh order after granting an opportunity of hearing to the petitioner. It is subsequent to the disposal of the said Writ Petition that the impugned order Annexure-P/2 dated 12/10/2012 was passed.

5. The contention of the counsel for the petitioner is that the said order of recovery is totally unsustainable for the reason that perusal of document Annexure-P/6 itself would reveal that it is not a case where the petitioner was absent from duty during the said period, but it appears that the petitioner had been reporting for duty and the respondents also have released the monthly salary of the petitioner without any objection whatsoever except for the issuance of letter Annexure-P/6. He further submits that the petitioner was as it is medically de-categorized and he was not otherwise able to

discharge his normal duties which an officer of R.P.F. is supposed to discharge and therefore also the respondents have accepting the fact that he was medically de-categorized paid the salary, the same could not have been recovered from the petitioner after having duly released the same and thus prayed for setting aside of the said impugned order.

6. The counsel for the respondents/railways however tried to justify the fact that since the petitioner has not worked during the intervening period and has also not reported for duty, the action on part of the respondents is fully justified as the intervening period has to be treated as Leave Without Pay. According to him once when the period would be treated as Leave Without Pay, the petitioner would not be entitled for any salary and if any salary has been paid, it is that which has been ordered to be recovered.

7. Having heard the contentions put forth on either side and on perusal of record what primarily reflected from the proceedings is that the petitioner appears to have been suffering from some medical ailments and he was also medically de-categorized. The petitioner on account of his ailments may not had been reporting for duty continuously, but at the same time the respondents have been releasing the monthly salary without any objection uninterruptedly.

8. The petitioner in between superannuated on 30/04/2009. Till the date of his superannuation, no action has been initiated by the respondents for declaring the period between 22/01/2008 to 29/01/2009 as Leave Without Pay.

9. Another aspect which cannot be lost sight of is the contents of Annexure-P/6. For ready reference, it is reproduced herein under:-

“It is, therefore, you are hereby advised to attend CSC's office once on receipt of this letter failing which claiming of monthly salary in your favour will be stopped forthwith.”

10. The plain reading of the aforesaid contents by itself would reveal that even at that point of time, the respondents have not held that the petitioner was not entitled for salary for the previous months.

11. Moreover, what also is reflected from the aforesaid letter was that all that the respondents had decided was that beyond 26/11/2008, if the petitioner fails to report to attend his duty at the office of Chief Security Commissioner, the payment of salary would be stopped thereafter.

12. In spite of the letter dated 26/11/2008, the respondents have been continuously and uninterruptedly releasing the salary to the petitioner till his age of superannuation i.e. on 30/04/2009.

13. Another aspect which also needs to be taken note of is that the respondents have not initially held that the petitioner has been receiving the monthly salary for the said intervening period on account of any misrepresentation or fraud played by him. On the contrary the stand of the respondents being that the salary stood released to the petitioner because of inadvertence or a clerical error on part of the office of the respondents.

14. Given the aforesaid facts, the petitioner as such cannot be blamed for having received the salary which was duly paid by the respondents periodically and uninterruptedly to the petitioner.

15. Now the petitioner having retired and till the date of retirement no action having been initiated by the respondents they would not be justified in recovering payment of salary duly paid to the petitioner between 22/01/2008 to 29/01/2009.

16. Given the aforesaid facts and circumstances of the case, the impugned order Annexure - P/2 passed subsequent to the disposal of the Writ Petition i.e. WP No. 4157/2010 is not justified.

17. Accordingly, both the impugned orders Annexures – P/1 and P/2 being not sustainable and deserve to be and are accordingly set aside.

18. It is held that the recovery to be made from the retiral dues of the petitioner would be only justified so far as the period between 30/01/2009 to 30/04/2009.

19. However, the petitioner would be entitled for refund of the salary recovered for the period between 22/01/2008 to 29/01/2009.

20. It is expected that the authorities would act upon the order passed by this Court promptly preferably within a period of 60 days from the date of receipt of certified copy of this order.

21. Accordingly, the Writ Petition stands partly allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE