

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 7744 of 2018

Girish Kumar Tiwari S/o Late Badri Prasad Tiwari, Aged About 53 Years, Time Keeper, Working At Office Of Public Works Department, (B/r), Sub-Division- Narhrpur, District- Kanker, Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of Public Works, Atal Nagar, Mahanadi Bhawan, New, Raipur, Chhattisgarh.
2. Executive Engineer, Public Works Department (B/r), Division-Kanker, District- Kanker, Chhattisgarh.
3. Sub-Divisional Officer, Public Works Department (B/r), Sub- Division- Narharpur, District - Kanker, Chhattisgarh.

---Respondents

For petitioner	:	Shri Somkant Verma, Advocate.
For State	:	Shri Chandresh Shrivastava, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/11/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/1 dated 05/11/2018 whereby the respondents have ordered for recovery of an amount of Rs.85,679/- in respect of an excess payment made to the petitioner during the period 01/01/2016 to 30/06/2017.
2. The counsel for the petitioner submits that, the impugned order is bad in law for the reason that, the recovery so made is impermissible under law in the light of the judgment passed by the Hon'ble Supreme Court in the case of **State of Punjab & Ors. etc. v. Rafiq Masih (White Washer) etc.** [2015 AIR SCW 501]. He further submits that, in a similar matter, this

Court already on 26/10/2018 passed an order in favour of the petitioner i.e. in WPS No. 7056/2018 in the case of Khem Ram Rajak v. State of C.G & Ors.

3. Perusal of record would show that, the impugned order has been passed in respect of certain excess amount paid to the petitioner with effect from 01/01/2016 to 30/06/2017. The said period cannot be said to be old erroneous payment to the petitioner. The erroneous payment is of recent past.

4. Moreover, the petitioner has got about almost 10 years of service left with the department and therefore when the error has been detected by the department, they have passed the impugned order.

5. Considering the facts and circumstances of the case this Court is of the opinion that, the impugned order appears to be bad in law for the reason that the same has been issued without taking the petitioner into confidence in as much as before passing the order of recovery, the department has not issued any show cause notice to the petitioner, nor have they given the petitioner any opportunity of hearing to justify the payment which has been paid to the petitioner which according to the respondents have been erroneously paid.

6. It is settled position of law that, when an order is passed which has an adverse civil consequence like in the present case which has an order of recovery and the same has a civil consequence adverse to the interest of the petitioner, the minimum that is required is an opportunity of hearing in the

absence of which the order of the State Government can be safely said to be one in violation of the principles of natural justice.

7. Given the said circumstances this Court is of the opinion that, the impugned order to that extent is bad in law and the same deserve to be and is accordingly set-aside.

8. However, the right of the respondents is reserved if they deem fit to grant an opportunity of hearing to the petitioner and thereafter pass a suitable order in respect of an excess payment paid to the petitioner.

9. With the aforesaid direction, the Writ Petition stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit