

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 8240 of 2018**

R. K. Sisodia S/o S. P. Singh Sisodia, Aged About 58 Years, Working As Assistant Engineer And Posted At Tandula Water Resources Division Durg, District Durg, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Water Resources, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh
2. Executive Engineer, Office Of Tandula Water Resources Division Durg, District Durg Chhattisgarh
3. Divisional Joint Director, Treasury Account And Pension, Durg, District Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ajay Shrivastava, Advocate
For Respondent/State	:	Shri D. Wankhede, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****12/12/2018**

The grievance of the petitioner in the present writ petition is that the respondents have now vide impugned order Annexure P-1 ordered for withdrawal of the benefit of two increments which the petitioner got on account of undergoing the family planning operation.

2. Contention of the counsel for the petitioner is that the benefit has been paid to the petitioner for well over 18 years till now when suddenly it has been withdrawn and the department has proposed for recovering the

excess amount paid in between. The petitioner drew the attention of this Court to the order passed by the Madhya Pradesh State Administrative Tribunal in OA No. 362 of 1998 decided on 14.12.2000 wherein the State Administrative Tribunal vide a judicial order passed in favour of the petitioner had awarded the benefit of advance increment for having undergone family planning operation. According to the petitioner, since the order has attained finality and it has also been implemented, the respondents could not have withdrawn the same as the same would amount to violating the order of the Tribunal. He further submits that even otherwise the impugned order is bad in law for the reason that the same has been passed without affording any opportunity of hearing to the petitioner. Thus, it is also in violation of the principles of natural justice also.

3. State counsel on the other hand submits that the petitioner would have been entitled for the same only till the new revision of pay was implemented and the moment the revision of pay stood implemented, the benefit so granted could not have been further extended. Thus, the order cannot be said to be unjustified or bad in law in any manner.

4. Having heard the contentions put forth on either side and on perusal of the record what is undisputed is that, admittedly the impugned order has been passed without affording an opportunity of hearing to the petitioner. It is settled position of law that whenever an order which has an adverse consequence is passed, the minimum that is required is an opportunity of hearing. The same having not complied with, it clearly amounts to be in violation of the principles of natural justice. The impugned order/action also prima facie appears to be bad in law for the reason that the petitioner seems to have a judicial order in his favour from the State Administrative

Tribunal vide order dated 14.12.2000 in OA No. 362/1998. The authority concerned does not seem to have taken note of the aforesaid two factors while passing the order Annexure P-1 and the action taken thereunder.

5. Given the said facts, the impugned order Annexure P-1 is not sustainable and the same deserves to be and is accordingly quashed reserving the right of the State Govt. to proceed further with the case if they feel and also if it would be permissible after granting an opportunity of hearing to the petitioner and also keeping in view the judgment of the State Administrative Tribunal. The impugned order thus stands set aside with consequences to follow.

6. The writ petition accordingly stands allowed and disposed of.

**Sd/-
(P. Sam Koshy)
JUDGE**