

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 767 of 2019**

Yugal Kishore Panda S/o Late S.N. Panda, Aged About 60 Years
Presently Working As Accountant At Office Of Assistant Commissioner,
Tribal Development, Raigarh Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Scheduled Caste And Scheduled Tribe Development Department, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh
2. The Commissioner, Tribal Development, Raipur Chhattisgarh
3. The Assistant Commissioner, Tribal Welfare Department, Raigarh Chhattisgarh
4. The Mission Director, Rajeev Gandhi Shiksha Mission, Raipur Chhattisgarh
5. The Collector Raigarh, District Raigarh, Chhattisgarh
6. The Collector Cum District Mission Director, Rajeev Gandhi Shiksha Mission, Raigarh, District Raigarh Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Anup Majumdar, Advocate
For State/R-1 to 3 & 5	:	Mr. Arvind Dubey, P.L.
For Respondents 4 & 6	:	Mr. A. S. Kachhawaha, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/02/2019**

1. The present writ petition has been filed assailing the action on the part of the respondents in initiating the recovery proceeding in respect of certain alleged erroneous pay scale which the petitioner was granted and also in respect of the excess amount of deputation allowances which the petitioner has received for having over

stayed on deputation for a period of more than 4 years which is the maximum period permissible under the service rules.

2. Contention of the counsel for the petitioner is that when the post was advertised to be filled up on deputation, the respondents very categorical term offered the pay scale of 2200-4000 for which the petitioner applied and got selected. He worked for the period as long as he was there in the borrowing department on deputation. According to the petitioner, he was never responsible for the said pay scale, but it was the offer of the respondents themselves while taking the services of the petitioner on deputation. Likewise, it was the contention of the petitioner that initially he was sent on deputation in the year 1997 and he continued on deputation till 2006. Thereafter he was repatriated to his parent department. According to the petitioner, if at all if the petitioner could not have remained on deputation for a period of more than 4 years, it was the responsibility of the borrowing department as well as the parent department to recall the petitioner back. Here again it was not the fault of the petitioner for having over stayed his deputation period rather it was the fault on the part of the borrowing department as well as the parent department who had not recalled or repatriated earlier. For this reason also, the petitioner cannot be held responsible for having drawn any deputation allowances for a period beyond 4 years. Thus counsel for the petitioner prayed for the decision of the respondents in this regard to be set aside/quashed.
3. The respondents, on the other hand, tried to justify the action of the respondents on the ground that under the service rules the

petitioner could have stayed on deputation for a period of 2 years which could have been extended by another two years i.e. maximum of 4 years. The petitioner stayed beyond 4 years and therefore he would not be entitled for deputation allowances. It was further contention of the respondents that in the course of scrutinizing the case of the petitioner it was found that the petitioner has been erroneously granted pay scale of 2200-4000 whereas he was entitled for only the pay scale of 1320-2040. Therefore, it stands proved that the petitioner has been paid much more than what he was otherwise entitled for and for this reason also, the impugned action of the respondents does not warrant any interference.

4. Having heard the contentions put forth on either side and on perusal of record what is admittedly clear from the pleadings is that the petitioner was sent on deputation from Tribal Development Department to Rajeev Gandhi Shiksha Mission on deputation in the year 1997. The deputation period continued up till 31.08.2006. Thereafter the petitioner stood repatriated back to the Tribal Department where he is still working. It is also the admitted position that when the petitioner was sent on deputation, the respondents themselves had offered the petitioner the pay scale of 2200-4000 which the petitioner received all through his deputation period. There has been no misrepresentation or fraud played by the petitioner in getting the said pay scale. It is also not the case of the respondents that the petitioner had made any effort for staying on deputation for a period beyond 4 years, rather it appears that the respondents themselves did not recall the petitioner back after his

completion of 4 years term on deputation. Thus, as long as the petitioner was on deputation at the instance of the respondents, he would definitely be entitled for the benefits and allowances which would be payable to an employee on deputation. For the aforesaid reasons, the action on the part of the respondents in initiating recovery proceeding against the petitioner is totally unjustified, uncalled for and without any cogent reason or basis.

5. In view of the same, this Court is of the opinion that the action on the part of the respondents initiating recovery proceeding is liable to be held bad in law and it is ordered accordingly. It is made clear that the respondents would not be liable to carry out any recovery so far as the benefits which the petitioner had received while discharging his duties on deputation.
6. The writ petition according stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge