

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 1098 of 2011

Dinesh Singh Chouhan S/o Lt. Shri K.S.Chouhan, aged about 45 years,
Upper Division Teacher, Bapa Higher Secondary School Nimdha Distt.
Bilaspur, Chhattisgarh.

---- Petitioner(s)

Versus

- 1.** State of Chhattisgarh through the Secretary, Education Department, DKS Bhawan, Raipur (CG).
- 2.** Directorate, Lok Shikshan Raipur (CG).
- 3.** Principal, Bapa Higher Secondary School , Nimadh District Bilaspur (CG).
- 4.** District Education Officer, Bilaspur, District Bilaspur (CG).

---Respondents

For Petitioner	:	Shri Dharendra Mishra, Advocate.
For State	:	Shri Ashutosh Mishra, Panel Lawyer.
For Respondent No.3	:	Shri Palash Agrawal on behalf of Shri R.S. Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15.10.2019

- 1.** Challenge in the present writ petition is to the impugned orders Annexure P/1 & P/2. The challenge primarily is to Annexure P/1 whereby the promotion and the pay scale of Upper Division Teacher (in short, UDT) granted to the petitioner has been withdrawn. The challenge also is to the consequential relief of order being passed by the respondents for recovering of the difference of payment made by the department till the impugned order Annexure P/1 dated 21.01.2011 has been passed.
- 2.** This court while entertaining the writ petition, at the first instance, vide its order dated 25.02.2011 had stayed the effect of impugned order so far as recovery is concerned, which means, the order so far as reverting the petitioner back to the post of Lab Assistant was not stayed by the High Court.
- 3.** The challenge to the impugned order is firstly on the ground that the same has been passed at the belated stage of more than 5 years. The further

ground is that, the same has been issued without complying the basic principles of natural justice, inasmuch as, opportunity of hearing was not granted to the petitioner before the impugned order was passed. Further, in any case, the recovery initiated by the department is not sustainable as the amount paid to the petitioner on the promoted post was on account of the order passed by the State Govt. The petitioner is not responsible for the said erroneous payment, if any, paid to the petitioner.

4. The respondents, however, opposing the petition submits that since the petitioner basically was a Lab Assistant, he could not have been granted promotion to the post of UDT, and therefore, the pay scale of UDT also could not have been granted to the petitioner. When this error was detected, the respondent authorities have immediately processed the same and issued the order of rectification and also passed an order for recovering of the difference amount, if any, paid to the petitioner.
5. Having heard the contentions put forth on either side and on perusal of records, admittedly the petitioner had an order of promotion in his favour vide order dated 24.07.2006. The order was immediately implemented also and the petitioner received the benefits of the said order till order dated 21.01.2011 was passed. This by itself shows that the petitioner enjoyed the benefits of promoted post of UDT for a period of about five years. From perusal of pleadings it is apparently clear that before the order dated 21.01.2011 was passed, no opportunity of hearing was granted to the petitioner. The petitioner apparently has not been granted opportunity to show cause or to justify the promotion order that he has received way back in July, 2006.
6. It does not need much deliberation or discussion as it is by now a well settled position of law that before issuance of any order particularly the implication of which has an adverse civil consequence, the least that is

required is an opportunity of hearing to the concerned person. The Supreme Court as well as this court in a catena of decisions have reiterated the requirement of law for providing opportunity of hearing before issuing any order which has adverse civil consequence. Before cancelling the promotion order issued to the petitioner five years back, the minimum that was expected from the respondents was an opportunity of hearing of at least show cause, so that the petitioner could have justified the promotion that he had granted or the pay scale that he was granted five years back. In the absence of any such steps taken by the respondents, this court has no hesitation in reaching to the conclusion that the impugned order suffers from the basic principles of natural justice and the same therefore deserves to be and is set aside.

7. Since the impugned order is being set aside on the ground of non compliance of the principles of natural justice, the right of the respondents State stand reserved for passing a fresh order after due compliance of the principles of natural justice. So far as recovery part is concerned, since there is already an interim protection granted by this court on 25.02.2011 and taking note of the judgment of Supreme Court in case of Sahib Ram Vs. The State of Haryana & Others, 1995 Suppl (1) SCC 18 and judgment of this court in case of Vidyadhar Tiwari Vs. The State of Chhattisgarh & Others, 2006(1) MPHT105, it can be safely reached to the conclusion that the recovery part also becomes impermissible as the petitioner cannot be blamed in any manner for having received the said pay scale which was in fact granted by the respondents. There is no allegation of the petitioner having played fraud or made misrepresentation for getting the said promotion or pay scale.
8. Under the circumstances, the recovery part of the difference of wages paid to the petitioner being impermissible under law particularly in the light of

recent judgment of Supreme Court in case of State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. reported in 2015 AIR SCW 501. The same therefore stands set aside/quashed.

9. Accordingly, reserving the right of the respondents for carrying out rectification, if any, after giving an opportunity of hearing to the petitioner, the present writ petition stands allowed and disposed of. The impugned order dated 21.01.2011 stands set aside/quashed.

Sd/-
(P. Sam Koshy)
Judge

inder