

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4931 of 2019

Dr. Surya Prakash Saxena S/o Late Dr. Ambika Prasad Saxena,
Aged About 68 Years, R/o AMBIKA, HIG-43, Padmanabhpur, Durg
Chhattisgarh

---- Petitioner

Versus

1. The State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, Police Station - Rakhi New Raipur, District Raipur Chhattisgarh
2. Directorate Of Health Services, Through Director, III Floor, Indrawati Bhawan, New Raipur, District Raipur, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Rahul Tamaskar, Advocate.
For State	:	Mr. Arvind Dubey, P.L.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

08/07/2019

1. The challenge in the present writ petition is to the order Annexure P-1 dated 03.06.2019. Vide the said order the respondents have held that the petitioner has inadvertently been granted erroneous fixation of pay w.e.f. 01.01.2006 inasmuch as the petitioner has been granted certain incremental benefits which the petitioner otherwise was not entitled for and therefore, the Departmental has ordered for taking appropriate steps in this regard.

2. The contention of the counsel for the petitioner is that as per his instruction, there has been no erroneous fixation of pay granted to the petitioner and that all the incremental benefits which the petitioner has received is purely in accordance with the rules governing the field. Moreover, the respondents have passed the impugned order Annexure P-1 without affording an opportunity of hearing to the petitioner. What also needs consideration is that the petitioner has not in any manner made any misrepresentation or played fraud for the alleged excess payment, if any, received by the petitioner. Thus, counsel for the petitioner prayed for setting aside of the impugned order. The petitioner has also sought for an appropriate direction to the respondents to ensure that the petitioner is paid his entire retiral benefits as there is no other embargo left for the petitioner for not getting the retiral benefits including the benefit of 7th pay commission w.e.f. 01.01.2016 which also the petitioner is otherwise entitled for.
3. State counsel, on the other hand, submits that the action on the part of the respondents was based on the scrutiny of the service record of the petitioner and the Department has found that there has been erroneous fixation of pay given to the petitioner as certain increments have been granted to the petitioner which he is not otherwise entitled for. State counsel also tried to harp on the fact that the retiral dues of the petitioner could not be finalized on account of the disciplinary proceedings pending against the petitioner at the time of his retirement. Thus, prayed for quashment of the writ petition.

4. Having heard the contentions put forth on either side and on perusal of record what clearly reflects is that the petitioner retired from service on 30.04.2017 on the post of Chief Medical and Health Officer. On the date of retirement there was a show cause notice pending against the petitioner in respect of some alleged irregularities. However, subsequently the Department has exonerated the petitioner from the allegations levelled against him. As such there is no further embargo for the respondents for not releasing the retiral dues which the respondents have withheld till date. Since the respondents have totally exonerated the petitioner from the disciplinary proceedings, it appears that the petitioner has been unnecessarily denied his retiral dues which he was otherwise entitled for immediately on his retirement.
5. Moreover, the impugned order Annexure P-1 is an order which has been passed without affording an opportunity of hearing to the petitioner. It is one of the basic principles of natural justice that before an order is passed that too which has an adverse civil consequence, the least that is expected is an opportunity of hearing. Undoubtedly the petitioner stood retired from service about two years back. Now, if the respondents find certain erroneous payment having been made to the petitioner, it is expected from the respondents that they should have called upon the petitioner seeking explanation and then passed an appropriate order. In the absence of any such order being taken, the impugned order Annexure P-1 is not sustainable and the same deserves to be and is accordingly set aside/quashed.

6. Taking into consideration the judgment of the Supreme Court in the case of “***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.***” reported in ***2015 AIR SCW 501***, this Court has no hesitation in reaching to the conclusion that since the impugned order has been issued much after the retirement of the petitioner and the alleged wrongful fixation of pay was given to the petitioner more than 5 years prior to the petitioner having retired, the recovery part becomes impermissible under law. The respondents thus would be restrained from initiating any recovery proceeding against the petitioner.
7. So far as granting of proper fixation is concerned, if the respondent State feels that the petitioner has been wrongly granted certain fixation of pay which he was otherwise not entitled for, the respondents would be free to grant an opportunity of hearing to the petitioner and thereafter would pass a fresh order so far as the alleged erroneous fixation of pay is concerned.
8. Since the petitioner makes a categorical statement that the disciplinary proceeding initiated against the petitioner stands concluded and he being honorably exonerated from the charge levelled against him and that the petitioner has been denied of his retiral dues since April, 2017 onwards, this Court is of the opinion that ends of justice would meet if the petitioner is awarded interest on the amount which has till date not been released to the petitioner. Thus, the PF would carry interest as is otherwise granted on the PF amount by the Department. Rest of the amount shall carry interest

@ 6% per annum from the date of retirement till the date actual payment is made.

9. The writ petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Khatai