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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 5671 of 2019

Harikesh Kushwaha S/o Shri Keshav Ram Kushwaha, Aged About 49 Years, 57 Shaksharta Marg, Kedarpur, Ambikapur Sarguja Chhattisgarh, Police Station Ambikapur, District Sarguja, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Municipal Corporation Mantralaya, Raipur, Chhattisgarh

2. Secretary, Nagarpalika Nigam, Ambikapur, Chhattisgarh

3. President Through Presiding Officer, Inquiry Department, Nagarpalika Nigam, Municipal Corporation, Ambikapur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Soumya Rai, Advocate
For State	:	Mr. Anshuman Shrivastava, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

05.08.2019

1. The challenge in the present writ petition is to the orders Annexure P-8, P-11 & P-12. The action under challenge is the interest that has been ordered to be recovered for the loss of interest on the amount which the petitioner had collected by way of tax on different dates and which he had retained with him without depositing the same with the department and finally deposited it at a belated stage.

2. The facts of the case are that the petitioner was working as an Assistant Revenue Inspector under respondent No.2. The petitioner is said to have collected certain amount of tax on different dates but the same was not deposited in the Govt. Exchequer. The petitioner is said to have retained the said amount and used it for personal purpose. Subsequently, the said act was detected by the Department and a show cause notice was issued on 30.03.2017. The petitioner initially gave a clarification so far as the quantum of amount collected by him by way of tax. Subsequently, the petitioner on 25.05.2017 and on 24.03.2017 deposited the entire amount that he had collected and which he had not deposited in the State Exchequer at the appropriate time. The respondents have now issued an order against the petitioner directing the petitioner to pay interest on the amount so collected by him and which he had retained for his personal gains for a considerable period of time. It is these orders which are under challenge.

3. The contention of the counsel for the petitioner is that the Department has simultaneously initiated departmental inquiry against the petitioner which is already under progress and no final decision has been taken on the said departmental inquiry, therefore, till the departmental inquiry is finalized, the respondents be restrained from initiating recovery proceeding against the petitioner so far as the loss by way of interest is concerned. It is contended that the petitioner is a low paid employee and the amount to be recovered is an exorbitant amount and that the petitioner would not be able to survive if the amount is recovered by attaching the entire salary of the petitioner by way of recovery. It is further contended that the petitioner has not been informed as to the mode of calculation of interest, the rate of interest applied. There has also not been proper verification of the actual amount collected by the petitioner during the said period which he had not deposited.

4. Having heard the contentions put forth by the petitioner what stands undisputed is the fact that in the capacity of Assistant Revenue Inspector, the petitioner did recover certain amount of taxes on different periods. The amount collected by the petitioner was not deposited with the Department promptly. The petitioner retained the said amount and used it for his personal use. The other aspect which cannot be lost sight of is that as long as the petitioner had retained the amount, the Department as such was put to loss of the said amount and also suffered loss so far as the interest on the said amount.

5. The initiation of departmental inquiry is entirely a different aspect and the order for recovering the monetary loss suffered by the Department is also entirely different. The two proceedings can go simultaneously. The former is to determine the gravity of the misconduct and for imposition of an appropriate punishment and the later is to recover the actual loss suffered by the Department on account of the petitioner retaining the collected amount with him for a considerable long period.

6. For the aforesaid reasons, this Court is of the opinion that the recovery of the loss caused has got nothing to do with the departmental inquiry initiated against the petitioner. The impugned order of recovery therefore does not warrant any interference.

7. However, it has to be taken note of that the petitioner as on date is aged around 49 years and as such there is a considerable service left for the petitioner before he attains the age of superannuation. Therefore, at this juncture, attachment of the entire salary payable to the petitioner (as has been argued by the counsel for the petitioner) would not be justified as the petitioner ultimately has to survive and he has also to take care of his dependents. The recovery ought to have been on installment basis and the petitioner should be given reasonable and fair amount for sustaining. It is also necessary to inform at this juncture that the petitioner is definitely entitled to know as to the calculation of the interest part that has been done by the department, the verification of the records so far as determining the actual amount collected and which has not been deposited, the actual date of deposit by the petitioner and also the rate of interest applied by the department for quantifying the loss suffered. It is expected that the respondent no.2 shall be intimating the petitioner all these aspects at the earliest preferably before the next installment is recovered.

8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-
P. Sam Koshy
Judge

Khatai