

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6763 of 2019**

Deena Nath Kashyap S/o Late Ambika Prasad Kashyap Aged About 59 Years
Occupation Assistant Grade Ii, Department Of Veterinary, Balrampur
Ramanujganj Chhattisgarh, District : Balrampur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Veterinary Department, Mahanadi Bhawan, New Mantralaya, Atal Nagar, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. The Director Department Of Veterinary Services Indrawati Bhawan, Atal Nagar, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
3. The Deputy Director Veterinary Services, Balrampur, District Balrampur Ramanujganj Chhattisgarh, District : Balrampur, Chhattisgarh
4. The Joint Director Treasury, Account And Pension, Ambikapur District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

----Respondents

For Petitioner	:	Mr. Sunil Tripathi, Advocate
For State	:	Ms. Ishwari Ghritlahare, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****03/09/2019**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 01.07.2017. By way of the impugned order the salary of the petitioner has been re-fixed and has been fixed at a lower stage and it has been held that the excess amount which have been paid to the petitioner in between have to be recovered.
2. The counsel for the petitioner submits that the impugned order has been passed in utter violation of the principles of natural justice in as much as no opportunity of hearing has been given and that the petitioner was not called upon to justify the action on the part of the Department so far as reduction in his salary is concerned. The petitioner further submits that he has been receiving the salary right from the beginning and that there is no allegation of any misrepresentation or fraud played by the petitioner obtaining the same.

3. The State counsel however opposing the petition submits that since there is an error detected in fixation of pay given to the petitioner the respondents have issued the impugned order and that cannot be held to be bad in law.
4. Having heard the contentions put forth on either side and on perusal of record, particularly taking note of the fact that effect of the impugned order has an adverse civil consequence to the extent that the petitioner's monthly salary is getting reduced substantially. The impugned order also has an effect of recovery which is going to be ordered against the petitioner. Undisputedly, before issuance of the impugned order the petitioner was not given an opportunity of hearing or a chance for explaining whether the fixation given to the petitioner was proper, legal and justified or not.
5. Given the aforesaid facts and circumstances of the case, since there is prima facie material to which conclusion the impugned order has been passed without giving an opportunity of hearing to the petitioner, this Court is of the opinion that the impugned order is hit by the principles of natural justice and the same deserves to be and is accordingly set-aside/quashed.
6. The respondents if at all if they have found any error in the fixation given to the petitioner should give an opportunity of hearing to the petitioner and thereafter pass a suitable order after taking into consideration the submission that the petitioner has to make. However, the recovery of the excess amount is concerned, this Court has no hesitation in holding that the law so far as the recovery is well settled unless and until the excess payment made has been made on the fault of the employee, the same cannot be recovered from him. The authorities if at all they find any erroneous fixation only have the right for carrying out the rectification but the recovery part would not be permissible.

7. The view of this Court stands fortified from the judgment of the Hon'ble Supreme Court in the case of “***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.***” reported in ***2015 AIR SCW 501***.
8. With the aforesaid observation and the liberty given to the State Government, the writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved