

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3083 of 2020**

Rajesh Shukla S/o Late Shri K. P. Shukla Aged About 63 Years R/o M.I.G.
62, Nehru Nagar, Bilaspur, District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Water Resource Department, Mantralaya, Naya Raipur, Raipur, Chhattisgarh
2. Engineer In Chief Sector - 19, Shivnath Bhavan, Atal Nagar, District Raipur, Chhattisgarh
3. Chief Engineer Mahanadi Bhawan, Godavari Basin, District Raipur, Chhattisgarh
4. Executive Engineer Water Resources Department, Division - Kota, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Waquar Naiyer, Advocate
For State	:	Mr. Rahul Jha, Dy. GA

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

07/12/2020

1. The challenge in the present writ petition is to the impugned order Annexure P-1 whereby the respondents have intimated the petitioner that in the course of the implementation of the 7th Pay Commission w.e.f. 01.01.2016 the petitioner has been paid certain excess amount to the tune of Rs. 2,25,594/- and which the respondents have been asking the petitioner to deposit or else same would be recovered from his dues payable to him.

2. Counsel for the petitioner submits that there is no wrong fixation made by the respondents and that whatever fixation has been paid to him has been rightly paid. He further submits that even it has been wrongly paid the requirement of law was that at least the petitioner should have been called upon to explain before the impugned order being implemented so far as the erroneous fixation is concerned. It was the further contention of the petitioner that even otherwise the only remedy that respondents had was to rectify the error and there cannot be a recovery of amount that has already been paid to the petitioner and which petitioner has already consumed keeping in view 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 4 SCC 334***.
3. State counsel opposing the petition submits that whenever the revision of pay is done, there is an undertaking given by all the employees which in the instant case the petitioner had also given whereby the petitioner has undertaken that in the event of an error so far as fixation of pay is concerned, the respondents would be at liberty to recover the same from the amount payable to the petitioner. Therefore, the petitioner does not have any case made out and writ petition deserves to be rejected.
4. Having gone through the contents of the writ petition as also the contents of the reply that the respondents have submitted, the admitted factual position as it stands, the petitioner was working as Sub Engineer. He retired from service w.e.f. 31.12.2018. It is much after the retirement of the petitioner i.e. on 06.11.2019 that respondents for the first time have issued an order stating that there is an excess payment made by the department in the course of implementing the benefit of 7th Pay Commission w.e.f. 01.01.2016 and respondents have called upon the petitioner to refund the excess amount to the tune of Rs. 2,25,594/-.

5. Another admitted factual position as it stands that before issuance of the impugned order no show cause notice or explanation has been sought from the petitioner to justify the pay scale that he has received erroneously. In addition to the judgment of the Supreme Court in the case of Rafiq Masih(Supra) what also needs to be considered is that it is again a settled position of law that any action which has an adverse consequences the least that respondents are expected of before passing an order having adverse consequences is granting an opportunity of hearing.
6. From the admitted factual matrix of the case it is clear that no show case notice or explanation was sought from the petitioner before impugned order was passed. Taking into consideration the judgment of the Supreme Court in the case of Rafiq Masih(Supra) as also catena of decisions whereby the requirement of show cause notice has been reiterated by the Supreme Court before any action or order having an adverse civil consequences is passed, the impugned order in the instant case would not be sustainable for the said reason.
7. Given the said facts, the writ petition at this juncture stands allowed and disposed of directing the respondents to first grant an opportunity of hearing to the petitioner so far as excess payment is concerned and thereafter on receipt of the reply of the petitioner, appropriate decision be taken. Meanwhile the impugned order Annexure P-1 dated 06.11.2019 shall not be acted upon by the respondents.
8. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge