

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 840 of 2021**

Smt. B. Sunita W/o Shri B. V. Prasad Aged About 53 Years Presently
Posted As Nursing Sister, Government Ayurved College Hospital, Raipur,
Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
2. The Principal Secretary Department Of Finance, Mahanadi Bhawan, Atal Nagar, District Raipur, Chhattisgarh
3. The Superintendent Government Ayurved College Hospital, Raipur, District Raipur, Chhattisgarh
4. The Director Treasury Accounts And Pension, Indrawati Bhawan, Atal Nagar, Raipur, District Raipur, Chhattisgarh
5. The Joint Director Treasury Accounts And Pension, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Ms. Juhi Jaiswal, Advocate
For State	:	Mr. Rahul Jha with Ms. Akansha Jain, Dy. GA

Hon'ble Shri Justice P. Sam Koshy**Order on Board****26/02/2021**

1. The challenge in the present writ petition is to the order Annexure P-1 which was issued on 06.03.2020. The said order is an order of recovery for an amount of Rs. 4,33,780/- recoverable from the petitioner on the pretext that the petitioner has been given certain amount in excess to that she was otherwise entitled for and the said excess payment is for a period between 26.11.1990 till July, 2020.
2. At the outset, counsel for the petitioner submits that petitioner is working on the post of Nursing Sister under the respondents and that she is in employment of the respondents from 1990 onwards and

she still has got few years of service left before retirement. The petitioner was abruptly vide Annexure P-1 dated 06.03.2020 issued with a notice showing that she has been paid certain excess payment on account of certain erroneous fixation of pay to the tune of Rs. 4,33,780/- and erroneous fixation was for the period between 26.11.1990 till July, 2020.

3. Counsel for the petitioner submits that before issuance of the said order there was no opportunity of hearing given to the petitioner so as to give an explanation to the alleged excess payment made to the petitioner. It is categorically stated by the counsel for the petitioner that the said payment has been paid not just to the petitioner but it has been uniformly applied to all the Nursing Sisters under the respondents and as such there is no irregularity or error on the part of the respondents to the fixation of pay that was granted to the petitioner and as such the order of recovery is bad. Counsel for the petitioner further submits that in any case there is no allegations of any misrepresentation or fraud played by the petitioner for getting the said erroneous fixation of pay, if any. Moreover, the same has been provided to the petitioner even it has been wrongly given on account of fault on the part of the respondents and which the petitioner bonafidely has consumed the same.
4. Even if it has been erroneously granted, the only recourse available with the respondents was rectification of the erroneous fixation, but under no circumstances could the respondents be permitted to make any recovery from the salary or other dues payable to the petitioner. The petitioner refers to the judgment of the Supreme Court in the case ***“State of Punjab and others etc. vs. Rafiq Masih (White***

Washer) etc.” reported in **2015 AIR SCW 501.** in support of her contentions.

5. State counsel on the other hand submits that plain reading of the impugned order Annexure P-1 would by itself reflect that in order it has been passed based upon the certain circulars and instructions that were issued in the erstwhile State of M.P. and on the basis of which it has been found that petitioner has been paid wrong fixation of pay which she was not otherwise entitled for and the moment it has been detected, the authorities have promptly issued a notice of recovery to the petitioner and as such there is no illegality for the same.
6. Having heard the contentions put forth on either side and on perusal of records, some of the admitted factual position as it stands petitioner is an employee working with the respondents right from 1991 onwards, the petitioner is still in service and has got only few years of service left before retirement. Another aspect which stands established is the fact that petitioner was abruptly issued with an order of recovery on 06.03.2020. That from the pleadings attached to the writ petition contentions of the petitioner is that respondents have till date not given effect to the impugned order or recovery.
7. From the perusal of the records, it also appears that before issuance of the impugned order Annexure P-1 there was no opportunity of hearing given to the petitioner seeking an explanation of the petitioner as to why the said amount be not recovered so far as the amount of wrong fixation, if any is concerned.

8. By now it is a well settled proposition of law that in the event of any order on the part of the employer which has adverse civil consequence, the least that is expected from the employer is at least a show cause to the delinquent or the concerned employee who could give an explanation whether it has been justifiably paid to her or wrongly paid to her. In the instant case apparently no opportunity of hearing was given to the petitioner thus it is a clear case of violation of natural justice.
9. Given the fact that petitioner is still in service and that she has got few years of service left before retirement and moreover as of now it is not clear whether the entire amount has been recovered from the petitioner or not, this Court is of the opinion that writ petition at this juncture can be disposed of directing the respondents to grant an opportunity of hearing to the petitioner in respect of the alleged excess order or recovery. The petitioner in turn would be entitled to give justification in respect of the pay and allowances that she has received. After considering the same, let respondent no.3 to 5 take appropriate decision determining whether petitioner has been in fact wrongly paid said the fixation of pay that was granted to her or the excess payment which has been paid to her. In the event, if the respondent no.3 to 5 reaches to the conclusion that petitioner has been rightly paid salary and allowances between 26.11.1990 till July, 2020 and the impugned order was not justified the recovery should not be given effect to and at the same time in case if the finding of the authorities is that order of recovery passed by the authorities was in accordance with rules, regulations and circulars governing the field, appropriate order should be communicated to the petitioner in

respect of the same giving reasons for the same and petitioner in turn would be at liberty to challenge the same in case if she is still aggrieved of the same.

10. Meanwhile, till the respondent no.3 to 5 pass a fresh order the impugned order Annexure P-1 dated 06.03.2020 shall not be given effect to.
11. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit