

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 705 of 2021**

Smt. Meena Joseph, W/o Shri Allwin Joseph, Aged About 54 Years
Presently Posted As Staff Nurse, Community Health Centre, Kabir Nagar,
Dharsiwa, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Atla Nagar, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. The Principal Secretary Department Of Finance Mahanadi Bhawan, Atal Nagar, District - Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Block Medical Officer, Community Health Center, Dharsiwa, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
4. The Director Treasury Accounts And Pension, Indrawati Bhawan, Atal Nagar, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
5. The Joint Director Treasury Accounts And Pension, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
6. Drawing And Disbursement Officer, Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Ms. Juhi Jaiswal, Advocate
For State	:	Mr. Vikas Shrivastava, PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/02/2021**

1. The challenge in the present writ petition is to the order Annexure P-1 which was issued in September, 2017 though a specific date is not reflected in the said order. The said order is an order of recovery for an amount of Rs. 2,57,311/- 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 08.02.1991 till 30.06.2017.

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 1991 onwards and she is still has got few years of service left before retirement. The petitioner was abruptly vide Annexure P-1 in September, 2017 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. 2,57,311/- and erroneous fixation was for the period between 08.02.1991 to 30.06.2017. 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 was 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.
3. 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 petitioner bonafidely consumed the same. Even if it has been erroneously granted, the only recourse available with the

respondents was rectification of the error, 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.

4. 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.
5. 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 few years of service left before retirement. Another aspect which stands established is the fact that petitioner was abruptly issued with order of recovery in September, 2017 and from the very same month it appears that recovery has been initiated as would be reflected from the pay slip that was given to the petitioner for the month of September, 2017.

6. 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 as regards the amount of wrong fixation, if any.
7. By now it is 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.
8. 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 payment or recovery. The petitioner in turn would be entitled to give justification in respect of the pay and allowances that she has received and after considering the same, let respondent no.3 to 5 take appropriate decision determining whether petitioner has been in fact wrongly paid said fixation of pay that was granted to her or excess payment which has been paid to her.

9. In the event, if the respondent no.3 to 5 reach to the conclusion that petitioner has been rightly paid salary and allowances between 1991 to 2017 and the impugned order was not justified, any amount that has been recovered by the respondents till now shall be refunded back to the petitioner forthwith. That 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.
10. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit