

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 842 of 2021**

Ku. Meera Yadav D/o Late Shri Shivcharan Yadav Aged About 63 Years
Resident Of Mig 2, Phase No. 1, Housing Colony, Kabir Nagar, Tatibandh,
Raipur, Chhattisgarh 492099

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, District Raipur, Chhattisgarh
2. The Principal Secretary Department Of Finance, Mahanadi Bhawan, Atal Nagar, District Raipur, Chhattisgarh
3. Civil Surgeon And Superintendent District Hospital, 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. Challenge in the present writ petition is to the order Annexure P-1 dated 04.03.2020. Vide the said order the respondents have shown chart by which it is reflected that petitioner was allegedly given wrong fixation of pay starting from Feb, 1988 till July, 2019.
2. Facts of the case is that the petitioner was working under the respondents as Nursing Sister appointed in the year 1988. She has retired from service in Nov.2019. The petitioner till date has not been paid pensionary benefits that she is otherwise entitled for on her retirement. Now much after the date of retirement the respondents

have issued Annexure P-1 whereby it has been reflected that petitioner from 1988 till July, 2019 was paid some erroneous fixation of pay and thereby the petitioner has received certain excess payment which otherwise she was not entitled for and said amount shall be recoverable from the pension payable to the petitioner. Though the exact amount of recovery to be made has not been reflected in the calculation sheet prepared by the respondents whereby the erroneous fixation of pay has been reflected.

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 admittedly the factual position as it stands is that the petitioner was appointed in the year 1988 and is retired from service in Nov.2019 , when she was in service whatever fixation was granted in terms of the order of appointment the petitioner has received salary and benefits and have also bonafidely consumed the salary and other benefits provided to her. Much after the date of retirement the respondents have now issued recovery order showing that petitioner has been paid certain excess payment which otherwise she was not entitled for and excess payment arose on account of alleged erroneous fixation of pay. The petitioner before issuance of said impugned order admittedly was not issued with show cause notice seeking for her clarification as to fixation has been said to be

wrongly provided to her. Abruptly the impugned order of erroneous fixation of pay has been passed by the respondent authorities.

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 stands already retired from service and notice of excess payment has been issued subsequently to her retirement, 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 from 1988 till July, 2019 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 initiation of enquiry by the respondents as directed by this Court in the present writ petition should not come in the way of the respondents in releasing the pensionary benefits to the petitioner.

11. Meanwhile, till the respondent no.3 to 5 pass a fresh order the impugned order Annexure P-1 dated 04.03.2020 shall not be given effect to.

12. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit