

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5697 of 2021

Dhaneshwar Rao Magar S/o Gulab Rao Magar Aged About 52 Years
Working On The Post Of Excise Constable, R/o Old Sarkanda, Shiv Ghat,
Bilaspur, District- Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through- Secretary, Department Of Excise, Mantralaya, Mahanadi Bhawan, New Raipur, Atal Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. The Excise Commissioner Aabkari Bhavan, Chhokara Nala, Labhandi, Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Deputy Commissioner Excise Bilaspur, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Pushkar Sinha, Advocate.
For State	:	Ms. Akansha Jain, Dy. GA with Mr. Ishan Verma, PL

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/10/2021

1. Aggrieved by entry made in the service record of the petitioner vide Annexure P-1, the present writ petition has been filed.
2. Vide the impugned action on the part of the respondents, they have taken a decision for canceling the benefit of regular pay scale extended to the petitioner from the initial date of appointment on the post of Salesman till the date they were regularized in service of the respondent Department in the year 2008.
3. Contention of the petitioner is that as per the service record itself the petitioner was initially appointed as a Contingency Paid Employee/Daily wage Employee in the Excise Department discharging the duties of a Salesman. Having discharged the duties for a considerable period of time, they were considered for regularization and finally the petitioner was

regularized in the year 2008. However, when the regularization was done the petitioner was granted the benefit of regular pay scale from the initial date of appointment i.e. in the year 1993 that is the initial date of engagement on the post of Salesman.

4. Now vide the impugned entry made in the service record, the respondents have taken a decision that he has been wrongly granted the benefit of regular pay scale from the initial date of engagement as a Salesman i.e. in the year 1993 whereas in fact the petitioner would have been entitled for the regular pay scale only from the period he was regularized in service with the respondents. It is only then that the petitioner had become a regular government employee entitling him for a regular pay scale. An erroneous fixation of pay that was given prior to the date of regularization is erroneous excess payment made on behalf of the respondents and they have ordered for recovering of the said excess amount and for rectification pay scale of the petitioner for regular pay scale only from the date he was regularized in service in the year 2008.
5. Counsel for the petitioner at this juncture submits that before making endorsement in the service record, the petitioner was never given any intimation or information, nor was he ever called upon to provide any explanation to justify the pay scale that petitioner had received for during this period. Counsel for the petitioner submits that since the action on the part of the respondents is one which has an adverse civil consequence inasmuch as there is an action of recovery and also there is a decision of the revising pay scale of the petitioner. Since both these actions are adversely affecting the existing benefits which the petitioner is drawing, least that was expected from the respondents was for an opportunity of hearing so as to meet the requirement of principles of natural justice. In

the absence of any such opportunity/decision, the action in unilaterally making endorsement in the service record without there being any opportunity of hearing and therefore without there being any such order, the action has been taken by the respondents individually in respect of the petitioner is bad.

6. State counsel on the other hand referring to the endorsement made in the service records, submits that the plain reading of the contents is self explanatory in itself to the extent that petitioner was initially engaged under the department as a Daily Wage Employee/Contingency Paid Employee. Thus there was no indefeasible right created in favour of the petitioner for getting a regular pay scale from the initial date of engagement as a Daily Wage Employee. That any benefit which could be extended to the petitioner could have been only from the date of regularization and not earlier to that. However, erroneously the petitioner seems to have been given benefit of regular pay scale from the date of initial engagement which has now been ordered to be rectified and excess payment to be recovered.
7. Learned counsel for the respondents submits that the Department in any case has a right to rectify any clerical error in case any erroneous fixation of pay that has been granted to an employee. The said part cannot be subjected to challenge, more particularly under the Writ Jurisdiction.
8. Having heard the contentions put forth on either side and on perusal of record, the admitted position as it stands from the pleadings is that the petitioner was initially engaged somewhere in the year 1993 as a Salesman. The services of the petitioner were as a Daily Wage Employee/Contingency paid Employee. Service of the petitioner was regularized in the year 2008. The benefit of regular pay scale was

extended to the petitioner from the initial date of engagement i.e. in the year 1993. It is this action which has now been ordered to be rectified and excess payment made between 1993 to 2008 ordered to be recovered which is under challenge in the present writ petition.

9. From the pleadings, it prima facie, reflects that there was no opportunity of hearing as such given to the petitioner before the decision was taken. From the pleadings, it also appears that there does not seem to be any formal order of rectification of the erroneous pay scale and for recovering of the excess payment issued against the petitioner.
10. Given the said facts, this Court has no hesitation in holding that since the action on the part of the respondents is one which has an adverse civil consequences and the action is one which is hit by the principles of natural justice as there was no opportunity of hearing given to the petitioner and so far as entry made in the service record to that extent is unsustainable and deserves to be and is accordingly ordered to be quashed.
11. However, the right of the respondent State stands reserved if they so want to take appropriate action against the petitioner in respect of alleged erroneous fixation of pay after giving an opportunity of hearing to the petitioner.
12. With the aforesaid observations, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge