
(2019) 10 CHH CK 0049

Chhattisgarh High Court

Case No: Writ Petition (S) No. 8246 Of 2019

Roopdev Das

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Oct. 14, 2019

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: Sunil Tripathi, Amrito Das

Final Decision: Allowed

Judgement

Goutam Bhaduri, J

1. The challenge in the present writ petition is to the order Annexure P/1 dated 01.08.2017. By way of the impugned order the salary of the petitioner

has been re-fixed and has been fixed at a lower stage and it has been held that the excess amount which have been paid to the petitioner in between

have to be recovered.

2. The counsel for the petitioner submits that the impugned order has been passed in utter violation of the principles of natural justice inasmuch as no

opportunity of hearing has been given and that the petitioner was not called upon to justify the action on the part of the Department so far as reduction

in his salary is concerned. The petitioner further submits that he has been receiving the salary right from the beginning and that there is no allegation of

any misrepresentation or fraud played by the petitioner obtaining the same.

3. The State counsel however opposing the petition submits that since there is an error detected in fixation of pay given to the petitioner the

respondents have issued the impugned order and that cannot be held to be bad in law.

4. Having heard the contentions put forth on either side and on perusal of record, particularly taking note of the fact that effect of the impugned order

has an adverse civil consequence to the extent that the petitioner's monthly salary is getting reduced substantially. The impugned order also has an

effect of recovery which is going to be ordered against the petitioner. Undisputedly, before issuance of the impugned order the petitioner was not

given an opportunity of hearing or a chance for explaining whether the fixation given to the petitioner was proper, legal and justified or not.

5. Given the aforesaid facts and circumstances of the case, since there is prima facie material to which conclusion the impugned order has been

passed without giving an opportunity of hearing to the petitioner, this Court is of the opinion that the impugned order is hit by the principles of natural

justice and the same deserves to be and is accordingly set-aside/quashed.

6. The respondents if at all if they have found any error in the fixation given to the petitioner should give an opportunity of hearing to the petitioner and

thereafter pass a suitable order after taking into consideration the submission that the petitioner has to make. However, the recovery of the excess

amount is concerned, this Court has no hesitation in holding that the law so far as the recovery is well settled unless and until the excess payment

made has been made on the fault of the employee, the same cannot be recovered from him. The authorities if at all they find any erroneous fixation

only have the right for carrying out the rectification but the recovery part would not be permissible.

7. The view of this Court stands fortified from the judgment of the Hon'ble Supreme Court in the case of "State of Punjab and others etc. vs. Rafiq

Masih (White Washer) etc." reported in 2015 AIR SCW 501.

8. With the aforesaid observation and the liberty given to the State Government, the writ petition stands allowed.