

(2024) 03 CHH CK 0015
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 3144 Of 2013

Farid Mohammad,

APPELLANT

Vs

Chhattisgarh Infrastructure Development Corporation

RESPONDENT

Date of Decision : 04-03-2024

Acts Referred:

Constitution of India, 1950 — Article 226?Allowed

Citation : (2024) 03 CHH CK 0015

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench?

Advocate : Sunil Tripathi, Anup Majumdar

Final Decision : Allowed

Judgement

1. 1. The petitioner has filed the instant petition under Article 226 of the Constitution of India being aggrieved by order dated 30.10.2012 (Annexure P/1) issued by Respondent No.3, whereby the excess salary paid to the petitioner has been recovered.

2. Brief facts of the case, as projected by the petitioner, are that initially the petitioner was appointed as Conductor in erstwhile State of Madhya Pradesh under the services of Madhya Pradesh State Transport Public Bus Corporation, and after reorganization of the State of Chhattisgarh, the services of the petitioner has been transferred / allocated in the newly existing State of Chhattisgarh. The services of the petitioner were terminated on account of misconduct and by virtue of order dated 29.09.2004 passed by the learned Labour Court, the petitioner was re-instated in service. Thereafter, the respondent authorities against the order of learned Labour Court preferred an appeal before the Industrial Court, Raipur, and by order dated 11.05.2005 (Annexure P/2), the order of the learned Labour Court was set-aside. Being aggrieved by the order of Industrial Court, the petitioner preferred a petition being W.P. No. 4136/2005 before this Court and during the pendency of the said writ petition, counsel for the respondents submitted an option before the Court

that if the petitioner forgo the back wages part which was granted by the Labour Court in favour of petitioner, the respondents are ready to re-instate the petitioner in service and written consent in this regard was also submitted by both the parties, and vide order dated 25.06.2009 (Annexure P/3), the said writ petition was disposed of. As such, the order of Industrial Court dated 11.05.2005 is not in force and the same deemed to be set-aside. Thus, the petitioner from the date reinstatement, getting the regular salary but in spite of the order of this Court, the Respondent No. 2, without any notice, knowledge or opportunity of hearing, issued the subsequent order dated 06.10.2012 (Annexure P/9) and directed that in the light of order dated 11.05.2005, the petitioner is not a regular employee and not entitled to get regular salary and it was also directed to recover the excess payment made to the petitioner from salary. Thereafter, respondent authorities prepared the salary (Annexure P/5) of the petitioner from the period of joining dated 13.07.2009 and calculated the total salary which due in favour of the petitioner was Rs. 65,774/-. After preparing the bill voucher and salary of the petitioner, the Respondent No. 3, without affording any opportunity of hearing or without giving any notice and also without assigning any reason, recovered the amount of Rs. 53,414/- and only paid Rs. 12,360/- mentioning that the same has been recovered as excess salary of the petitioner from the period of February 2012 to September 2012. Hence, the instant petition by the petitioner seeking following relief (S) :-

10.1. The Hon'ble Court may kindly be pleased to call for the records of the petitioner.

10.2 The Hon'ble Court may kindly be pleased to set-aside the impugned order dated 30.10.2012, passed by the respondent No.3 (Annexure P/1) and pay the recovered amount of Rs.53,414/- along with interest of 9% till the payment to the petitioner.

10.2a The Hon'ble Court may kindly be quash/set-aside the order dated 06.10.2012 (Annexure P-9) issued by the office of Respondent No.2.

10.3 That any other relief, which Hon'ble Court deems fit and proper of the case, may be allowed.

10.4 Cost of the petition may also be allowed.

3. Learned counsel for the petitioner submits that the impugned order dated 30.10.2012 (Annexure P/1) by which the amount has been recovered from the petitioner is arbitrary and illegal. The respondent authorities have not followed the basic principles of natural justice and the impugned action has been taken without affording proper opportunity of hearing to the petitioner. Thus, the impugned order is bad in law. Learned counsel further submits that in compliance of this Court's order, the petitioner gave joining on 13.07.2009 and his salary was prepared accordingly. The excess payment, if any, made to the petitioner is not on the fault of the petitioner or not on account of any misrepresentation. The salary of the petitioner which was pending and not disbursed to the petitioner,

has been prepared by way of bill and vouchers dated 25.08.2012 and the same was sent to the office of Respondent No.3 for the payment, but without any legal and authorized order of the officers, the same has been deducted as recovered, which is not at all sustainable in the eye of law. Therefore, the impugned order dated 30.10.2012 (Annexure P/1) and order dated 06.10.2012 (Annexure P/9) are deserve to be set aside.

4. Learned counsel for respondents strongly opposed the prayer of the petitioner and submits that on 13.10.1988, the petitioner was appointed as Conductor on daily wages in the erstwhile M.P.S.R.T.C. in Korba Depot. As the services of the petitioner were not required, therefore on 22.06.1989 his services were terminated. The allegation of misconduct while discharging duty as Conductor was also proved against the petitioner. The petitioner challenged his termination/discontinuation before the Labour Court, Korba under C.G.I.R. Act. The learned Labour Court allowed the application of the petitioner and awarded reinstatement along with full back wages vide award dated 29.09.2004. The respondent authorities challenged the award dated 29.09.2004 before Industrial Court, Raipur and the same was allowed vide award dated 11.05.2005 and the award passed by the Labour Court was set-aside. Learned counsel also submits that the petitioner filed W.P. No.2136/2005 before this Court, which was disposed off vide order dated 25.06.2009 on the condition that the petitioner will forego the back wages part if he is reinstated. The consent order was passed by this Court without going into the merits of the case and without amending the award passed by the Industrial Court. On 03.02.2012, the petitioner was given joining in accordance with order dated 25.06.2009. But as the petitioner gave his joining on 13.07.2009, therefore, the arrears of salary along with allowances was calculated for the period commencing from 13.07.2009 to 02.02.2012 as Rs.65,774/-.

5. Learned counsel also submit that his pay bills for the period he didn't work till 02.02.2012 was prepared on 25.08.2012. The salary was calculated as if the petitioner was a regular employee, however before making payments the mistake was realized and subsequently an order dated 06.10.2012 was issued, in which it was clarified that petitioner was appointed on daily wage basis as Conductor and paid on collector rate and therefore, his reinstatement should be for the same nature of work/duty as he discharged earlier at the time of initial termination. Accordingly, a statement of excess payment of salary to be recovered from petitioner from February, 2012 to September, 2012 for Rs.53,414/- was prepared and was deducted while making final payment. The copy of order dated 06.10.2012 (Annexure R/2-1) was served upon the petitioner but the same was concealed while filing the petition. The petitioner has not approached this Court with clean hand, therefore, the petition is liable to be dismissed.

6. The petitioner, in his rejoinder, submits that the impugned order dated 30.10.2012 (Annexure P/1) has been passed without affording any opportunity

of hearing or prior intimation or notice to the petitioner. The petitioner filed W.P. No.2136/2005 against the order of learned Industrial Court and during the course of argument, the petitioner and respondent both made their consent that if the petitioner forgo the back wages part, the respondent authorities shall re-instate the petitioner in service. On the said consent, this Court disposed off the petition vide its order dated 25.06.2009 (Annexure P/3) and in compliance of this Court's order dated 25.06.2009, the services of the petitioner were restored. Though, the petitioner has submitted his joining before the respondent authorities on 13.07.2009 (Annexure P/4) but the respondent authorities deprived the petitioner from his salary and other service benefits and without giving any notice or affording opportunity of hearing, passed the order impugned and recovered the amount of Rs.53,414/- from the salary of petitioner and paid only Rs.12,360/-. Learned counsel also contended that the State of Chhattisgarh vide its notification dated 06.07.2015 (Annexure P/7) directed all the departments that if there is no fraud or misrepresentation found on the part of the employee, then recovery of excess payment for no fault of employee cannot be made against him. It is not a case of respondents that the excess payment has been made to the petitioner on account of misrepresentation or fraud on the part of the petitioner. As such, the impugned order (Annexure P/1) may be set aside.

7. Reliance has been placed on the decisions of Hon'ble Supreme Court in the matter of State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc. reported in 2015 AIR SCW 501, and order of this Court passed in the matter of Vidyadhar Tiwari Vs. The State of Chhattisgarh and Others reported in 2009 3 SCC 475.

8. This is an admitted position in this case that the petitioner was working as Conductor in the erstwhile State of Madhya Pradesh under the service of Madhya Pradesh State Transport Public Bus Corporation and after reorganization of the State of Chhattisgarh, the services of the petitioner have been transferred to the State of C.G. It is also not disputed that the petitioner was terminated on account of misconduct and after the order of learned Labour Court his services were restored. Further, against the order of learned Labour Court, the respondent authorities preferred an appeal before the Industrial Court, Raipur, and the learned Industrial Court by order dated 11.05.2005 set aside the order of learned Labour Court. Thereafter, the petitioner filed writ petition against this order, which was registered as W.P. No.4136/2005, which was disposed off by this Court with consent of both the parties that if the petitioner forgo the back wages, the employer/respondents will reinstate the petitioner in service and accordingly the order was passed on 25.06.2009.

9. It is the submission of learned counsel for respondents submits that the petitioner is daily wage employee and he was reinstated as daily wager.

10. The petitioner has challenged the impugned order dated 30.10.2012 (Annexure P/1) and order dated 06.10.2012 (Annexure P/9). The order dated 06.10.2012 has been passed by the Respondent No.2 ? Divisional Manager. For

sake of convenience, contents of order dated 06.10.2012 is reproduced herein as under :-

11. On 19.12.2022, the petitioner filed copy of order dated 13.12.2021 as additional document, whereby the pay fixation of the petitioner was done. The respondent did not rebut this document or did not file any document to counter the order dated 13.12.2021. Thus, it is clear that the respondent authorities carried out fixation of pay of the petitioner like other employees of the Department by order dated 13.12.2021. The documents available on record further goes to show that before passing impugned order no notice was given to the petitioner and no opportunity of hearing was afforded to him. In absence of any notice/document showing that any opportunity was given to the petitioner, the impugned order dated 30.10.2012 (Annexure P/1) and 06.10.2012 (Annexure P/9) are not sustainable. Further, considering the order dated 13.12.2021, whereby pay fixation of the petitioner was done, the recovery of amount in question is also not sustainable.

12. In view of the aforesaid discussion and looking to the facts and circumstances of the case, the petition is allowed and the impugned order dated 30.10.2012 (Annexure P/1) and 06.10.2012 (Annexure P/9) are set aside. The respondent authorities are directed to pay the recovered amount to the petitioner within two months from the receipt of copy of this order.

13. There shall be no order as to costs.