

W.P.(C) No.7056 of 2018

02. 30.04.2018

In this writ petition the order dtd.27.1.2018 passed by District Education Officer, Ganjam under Annexure-10 is under challenge whereby and where under the earlier pay fixation of the petitioner under different ORSP Rules made vide office order No.13757 dtd.31.7.2012 has been cancelled and in consequence thereof the authorities have come out with an order to recover the excess amount drawn to be deposited by way of Treasury Challan in the Head of Account.00-0202-02-800-0097 with proper entry in the original Service Book.

The grievance of the petitioner is that the earlier pay fixation vide order dtd.31.7.2012 has been cancelled without providing an opportunity of hearing to the petitioner.

According to him he is entitled to get the pay scale, basis upon which his pay was fixed vide order dtd.31.7.2012 but since no opportunity was given to him, he could not be able to brought all the facts in to the knowledge of the authority.

He submits that if opportunity of hearing would have been given, the fact regarding his entitlement would have been brought to the notice of the authority and since no opportunity was given, hence decision has been taken unilaterally by re-fixing his pay scale in reduced pay scale and in consequence thereof order of recovery has also been passed.

While on the other hand, Mr. S. K. Samal, learned Standing Counsel for School and Mass Education Department submits that cancellation of earlier pay fixation is based upon two Government Communications dtd.7.7.2012 and 13.6.2017 under Annexure-8 and 9 respectively but however, he fairly submits that from the order impugned it does not reflect that the petitioner has been given opportunity of hearing before passing adverse decision against him.

Having heard learned counsel for the parties and after appreciation of their rival submissions it is evident that the petitioner being aggrieved with the order dtd.27.1.2018 is before this court whereby and where under the earlier pay fixation under different ORSP Rules vide order dtd.31.7.2012 has been cancelled.

Mr. Samal, learned Standing Counsel submits that the said cancellation order is based upon the Government communications dtd.7.7.2012 and 13.6.2017 but however it does not reflect from the order impugned. Even accepting the argument of learned Standing Counsel for the sake of argument, then also it was the duty of the decision taking authority to deal with the Government Communication in its order reflecting therein the reason as to how these two circulars are coming in the way of the petitioner which led the authority to cancel the earlier pay fixation dtd.31.7.2012.

It is further evident from the order impugned that no opportunity of hearing has been given to the petitioner

otherwise it would have been reflected in the order impugned.

Mr. Samal, however submits that he may be allowed time to file counter affidavit.

Even if time will be allowed, the decision which has been taken cannot be improved since here the petitioner has taken the ground that adverse decision has been taken by the authorities without providing opportunity of hearing to him, hence giving time to file counter will not make any difference and the petitioner could not be given any opportunity since decision has already been taken by them.

It is cardinal principle of law that before taking adverse decision against any employee, he has a right to be heard, but here in the instant case the pay of the petitioner has been fixed way back on 31.7.2012 but the same has been recalled almost after lapse of five and half years and once the pay fixation has been made, the petitioner has accrued his right and before taking it away, the petitioner has a right to be heard.

Taking into consideration this ground alone, according to the considered view of this court, the decision taken by the authorities vide Annexure-10 dtd.27.1.2018 is not sustainable in the eye of law, hence the same is quashed.

In consequence thereof the matter is remitted before the District Education Officer, Ganjam to hear the matter afresh and after providing opportunity of hearing to the

petitioner take decision in accordance with law within reasonable period, preferably within three months from the date of receipt of copy of this order.

It is made clear that the District Education Officer, Ganjam while passing the order shall deal with the government circulars dtd.7.7.2012 and 13.6.2017 properly and assign the reason as to why these two circulars are in the way of extending higher pay scale which has been extended in favour of the petitioner vide order dtd.31.7.2012.

With the above observation and direction the writ petition stands disposed of.

.....
S.N. Prasad, J.