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WP-1603-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 18th OF OCTOBER, 2024WRIT PETITION No. 1603 of 2016*SMT.ROOPLEKHA SIRSATH**Versus**PUBLIC HEALTH AND FAMILY WELFARE DEPARTMENT AND OTHERS*

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Appearance:

Shri L. C. Patne - Advocate for the petitioner.

Shri Pranay Joshi - G.A./P.L. for respondents/State.

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ORDER

1] Heard on I.A. No.6332 of 2024 which is an application for bringing on record the L.R.s of the petitioner, is hereby allowed.

2] Counsel for the petitioner is directed to carry out the necessary amendment during the course of the day.

3] Also heard finally.

4] The petitioner is challenging the recovery of excess amount of Rs.5,81,867/- paid to him/her on account of wrong fixation of pay. It is argued that the aforesaid recovery of excess payment is contrary to the law. The petitioner is retired from the post of ANM which is Class-III post. The recovery of excess amount on account of wrong fixation of pay is illegal and contrary to the law laid down by the Apex Court in the case of *State of Punjab V/s. Rafique Masih (White Washer)*, (2015) 4 SCC 334 . He further submits that there is no misrepresentation or fault of the petitioner in fixation of pay.

5] The Full Bench of this Court at Principal Seat, Jabalpur in identical matters has quashed such recovery orders by judgment dated 06.03.2024 passed in



Writ Appeal No.815 of 2017(State of Madhya Pradesh and Another vs. Jagdish Prasad Dubey and Another) and connected writ petitions reported in 2024 SCC online MP 1567, it has been held in paragraph No.35 as under:

"Answers to the questions referred

35.(a) Question No.1 is answered by holding that recovery can be effected from the pensionary benefits or from the salary based on the undertaking or the indemnity bond given by the employee before the grant of benefit of pay refixation. The question of hardship of a Government servant has to be taken note of in pursuance to the judgment passed by the Larger Bench of the Hon'ble Supreme Court in the case of Syed Abdul Qadir (supra). The time period as fixed in the case of Rafiq Masih (supra) reported in (2015) 4 SCC 334 requires to be followed. Conversely an undertaking given at the stage of payment of retiral dues with reference to the refixation of pay or increments done decades ago cannot be enforced.

(b) Question No.2 is answered by holding that recovery can be made towards the excess payment made in terms of Rules 65 and 66 of the Rules of 1976 provided that the entire procedures as contemplated in Chapter VIII of the Rules of 1976 are followed by the employer. However, no recovery can be made in pursuance to Rule 65 of the Rules of 1976 towards revision of pay which has been extended to a Government servant much earlier. In such cases, recovery can be made in terms of the answer to Question No.1.

(c) Question No.3 is answered by holding that the undertaking given by the employee at the time of grant of financial benefits on account of refixation of pay is a forced undertaking and is therefore not enforceable in the light of the judgment of the Hon'ble Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another vs. Brojo Nath Ganguly and Another, reported in (1986) 3 SCC 136 unless the undertaking is given voluntarily."



6] In the case of *Shyam Babu Verma vs. Union of India, (1994) 2 SCC 521*, the Apex Court while observing that the petitioners therein were not entitled to the higher pay scales, had come to the conclusion that since the amount has already been paid to the petitioner, for no fault of theirs, the said amount shall not be recovered by the respondent/Union of India. The observation made by the Apex Court in the said case is as under:-

"Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-506 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them."

7] In the case of *Sahib Verma vs. State of Haryana (1995) Supp. (1) SCC 18*, the Apex Court once again held that although the employee did not possess the required educational qualification, yet the Principal granting him the relaxation, had paid the salary on the revised pay scale. It was further observed that the said payment was not on account of misrepresentation by the employee, but by a mistake committed by the department and, therefore, the recovery could not have been made. The relevant observation of the Apex Court is reproduced as under:-

"Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which appellant cannot be held to be fault. Under the circumstances the amount paid till date may not be recovered from the



appellant."

8] In the case of *Syed Abdul Kadir vs. State of Bihar (2009) 3 SCC 475*, the Apex Court held that recovery of excess payment from a retired government servant cannot be made if there is no mis-representation or fault on the part of the employee.

9] In view of the aforesaid, the petition is partly allowed and the impugned recovery order dated 09.02.2016 is hereby quashed. The respondents are directed to refund the recovered amount from the petitioner along with 6% interest from the date of recovery till the date of payment. Let the aforesaid exercise be done within a period of three months from the date of communication of the order passed today.

10] The petition is **partly allowed and disposed of.**

(SUBODH ABHYANKAR)
JUDGE

Pankaj