



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

WRIT PETITION No. 4188 of 2007

OM PRAKASH SAXENA

Versus

STATE OF M.P. AND OTHERS

Appearance:

Shri Alok Kumar Sharma - learned counsel for the petitioner.

Shri G.K.Agarwal- learned Government Advocate for the respondents/State.

Reserved on : 17.09.2025

Pronounced on : 22.09.2025

ORDER

With the consent of the parties, the matter is heard finally.

2. This petition has been filed under Article 226 of the Constitution of India by the petitioner seeking following relief(s):-

“(i) That, the order contained in Annexure P/1 and P/2 may kindly be declared as illegal and the same may kindly be quashed.

(ii) That, P.P.O. contained in Annexure P/3 may kindly be directed to be modified on the basis of petitioner's last pay as recorded in his service book Rs.9100/-



- (iii) That, respondents may kindly be directed to recalculate the amount of Gratuity payable to the petitioner and his pension may also be directed to be re-fixed accordingly.
- (iv) That, the amount recovered from the gratuity @ Rs.12300/- be directed to be paid to the petitioner along with difference of gratuity and arrears of pension re-fixed.
- (v) That, petitioner may kindly be awarded the interest on his dues at the market rates.
- (vi) Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case may also be given to the petitioner along with costs of this petition.

3. Learned counsel for the petitioner submits that petitioner was initially appointed as Block Extension Educator w.e.f. 29.11.1971 in the Health & Family Welfare Department. Thereafter, petitioner was promoted as Deputy Media Extension & Information Officer w.e.f. 6.4.1989. Subsequently, he was again promoted as District Media Extension & Information Officer w.e.f. 18.8.2003 vide order dated 7.8.2003 (Annexure P/4). The petitioner was granted the Higher Pay scale of Rs. 6500-10500 w.e.f. 19.4.1999 vide order dated 3.1.2004 (Annexure P/5). It is further submitted that in pursuance of the order dated 3.1.2004 (Annexure P/5), the pay of petitioner has been correctly fixed in his service book. The petitioner had been drawing a basic pay of Rs. 7250/- in the pay scale of 5500-175-9000 prior to getting the higher pay scale. Therefore, on getting the higher pay scale of Rs. 6500-200-10500, the petitioner's pay was fixed at Rs. 7300/- as per F.R. 22. Subsequently, adding the increments, petitioner's pay was fixed to Rs. 8100/- as on 6.4.2003. Thereafter, the pay of petitioner has been correctly fixed in his service book from the date of his promotion to District Media Extension and Information Officer i.e. 18.8.2003 by



granting him the benefit of F.R. 22-D and thus his pay was fixed as Rs. 8550/- on 18.8.2003. After adding his increments on 18.8.2004 and 18.8.2005, at the time of retirement, petitioner's basic pay was Rs. 9100/- as recorded in the service book.

Learned counsel for the petitioner further submits that just prior to his retirement, respondent no.3- Chief Medical and Health Officer, District Morena issued an order dated 19.1.2006 (Annexure P/1) by which the order of Higher Pay scale granted to the petitioner has been cancelled on the basis of some objection taken by respondent no.4- District Treasury Officer, Treasury District Morena. Thereafter, on 28.1.2006, respondent no.3 issued another order by which the petitioner's pay was re-fixed retrospectively, and the fixation made in the service book was amended, however, no entry of such re-fixation has been made in the service book of the petitioner. It is further submitted that the orders dated 19.1.2006 (Annexure P/1) and 20.1.2006 (Annexure P/2) were issued without giving any opportunity of being heard to the petitioner, and no show-cause notice was also served prior to passing the impugned order. It is further submitted that by order dated 3.1.2004 (Annexure P/5), the benefit of Kramonnati was extended to fourteen other persons but the benefit granted to the petitioner was cancelled by respondent No.3, who had no authority to cancel the order of the higher authority, as the order dated 3.1.2004 had been issued by respondent No.2- Commissioner, Health, after considering the case of the Departmental Promotion Committee. Thereafter, on the basis of the impugned order, pension payment order dated 12.6.2006 was sanctioned by respondent No.4, by which the pension was wrongly fixed and the gratuity payable to the petitioner was wrongly calculated in the P.P.O. Recovery of Rs.12,300/- has also been made. The pension



has been calculated on the basis of showing the last pay as Rs. 8,825/-, whereas his actual last pay was Rs. 9,100/- as correctly recorded in his service book. It is further submitted that the Kramonnati order issued by the Commissioner, Health has never been cancelled by the Competent Authority. It is further submitted that in the pay scale of Rs. 6500-10,500/-, the petitioner had already been promoted by order dated 7.8.2003 (Annexure P/4) from the pay scale of Rs. 5500-9,000/- to the pay scale of Rs. 8,000-13,500/-. Since the benefit of promotion came after much delay, the petitioner, along with his co-employees, was sanctioned the Kramonnati pay scale on completion of 24 years of service w.e.f. 19.4.1999 by order dated 3.1.2004 (Annexure P/5), i.e., after the petitioner had joined the promotional post pursuant to Annexure P/4. The fixation of the petitioner was done in the service book by incorporating the Kramonnati pay scale w.e.f. 19.4.1999 and thereafter fixing him in the promoted pay scale w.e.f. 18.8.2003, i.e., the date on which the petitioner joined his promoted post. It is further submitted that before coming into the Kramonnati Vetanman, the petitioner was drawing a basic pay of Rs. 7,250/- in the pay scale of 5,500-9,000 and thus was rightly fixed in the Kramonnati pay scale of 6,500-10,500/- at the stage of Rs. 7,300/-, and no F.R. 22-D benefit was given to him. The respondents are incorrect in stating that the petitioner's pay was wrongly fixed by giving the benefit of 22-D. It is further submitted that at the time of retirement, the respondents were pressurizing the petitioner and the retiral dues had not been settled; therefore, the petitioner submitted his consent/undertaking before the respondent authority. The petitioner was forced to give the above-said undertaking so that he might get his other dues settled expeditiously. Such an



undertaking, forcefully obtained, cannot waive the statutory and legal rights of the petitioner to challenge the illegal recovery made from his retirement dues.

It is further submitted that as per circular dated 19.4.1999, re-fixation was required to be done only where a person is promoted to the same pay scale in which he is placed after Kramonnati. But that is not the issue in the present case, because the petitioner was already promoted, and the benefit of Kramonnati relates to a lower pay scale than the promoted pay scale (i.e., promotion pay scale 8000-13,500/- and Kramonnati pay scale 6,500-10,500/-). It is further submitted that by circular dated 18.8.2005, it was clarified that an anomaly had arisen in certain cases of fixation from the Kramonnati pay scale to the promoted pay scale. It was further clarified that if an employee suffers financial loss in pay fixation in the promoted pay scale then his fixation should be done in a manner not to cause any loss to him, and in such cases, the difference of pay may be sanctioned as personal pay. It is further submitted that respondents No.3 and 4 have no jurisdiction to cancel the benefit of Kramonnati sanctioned by respondent No.2, and no re-fixation or recovery can be made from the petitioner at the time of his retirement.

4. Per contra, learned counsel for the State submits that the petitioner's pay fixation, after grant of Kramonnati and promotion to the next higher post, was wrongly done by giving the benefit of 22-D, as admitted in the petition, and that on the basis of the objection of the District Treasury Officer, Morena, the correct fixation of the petitioner's pay, calculated on the promotional post in the pay scale of Rs. 8000-13,500/- together with the benefit of 22-D, deserves to be maintained. It is further submitted that it is very clear from the Kramonnati



Scheme (Annexure R/1) that in case of grant of benefit of kramonnati and thereafter promotion accorded to an employee, either benefit of FR 22-A(2) on the kramonnati pay scale or 22-D on the previous pay scale treating as there had been no kramonnati granted ever, which ever is beneficial to the employee will be granted to him/her. The benefit of F.R. 22-D, wrongly extended to the petitioner on the next promotion post on the basis of the Kramonnati pay scale, has been modified by extending the benefit of F.R. 22-D in the pay scale of 5,500-9,000/- and, after grant of promotion to the next cadre in the pay scale of Rs. 8,000-13,500/-, as per rules, from the date of joining the promotional post by the petitioner, i.e., 18.8.2003. That mistake, which appeared in the pay fixation order dated 9.7.2004 for the promoted post in the pay scale of Rs. 8,000-13,500/- with effect from 18.8.2003, was corrected as per rules. Therefore, the benefit mistakenly extended was withdrawn and the fixation of the petitioner's pay was rightly done as per rules vide orders dated 19.1.2006 (Annexure P/1) and 20.1.2006 (Annexure P/2). It is further submitted that the petitioner had given an undertaking on 27.1.2006, and the excess payment of salary of Rs. 12,300/- made to the petitioner for the period from 18.8.2003 to 31.1.2006 was recovered on the basis of the undertaking. The Office of Treasury, District Morena, was sent letters dated 27.1.2006 (Annexure R/1) and 17.2.2006 (Annexure R/5), whereby it was asked to deduct the excess amount of Rs. 12,300/- from the gratuity of the petitioner.

5. Heard the learned counsel for the parties and perused the record.
6. Admittedly, the orders dated 19.1.2006 (Annexure P/1) and 20.1.2006 (Annexure P/2) were issued without giving any opportunity of being heard to the



petitioner and even no show-cause notice was issued prior to passing these orders.

7. The benefit of Kramonnati was granted by the Commissioner, Health, after considering the petitioner's case in the DPC, and the benefit was also granted to 14 other similarly situated persons. The Commissioner, Health, has never cancelled the Kramonnati order dated 3.1.2004. There is specific pleading in para 5.6 of the petition that the benefit of Kramonnati was extended to 15 other persons by order dated 3.1.2004 (Annexure P/5), and only the petitioner's benefit was cancelled by the respondent. There is no reply to the aforesaid contention. Vide order dated 3.1.2004 (Annexure P/5), the benefit of Kramonnati was extended to fourteen other persons but the benefit granted to the petitioner was cancelled by respondent No.3, who had no authority to cancel the order of the higher authority, as the order dated 3.1.2004 had been issued by respondent No.2- Commissioner, Health, after considering the case by the Departmental Promotion Committee.

8. Vide order dated 3.1.2004 (Annexure P/5) issued by the Commissioner Health/respondent No.2 on the basis of consideration made by Departmental Promotion Committee, the benefit of Kramonnati was extended to fourteen other persons but the benefit of Kramonnati given to petitioner was cancelled by respondent No.3. Other 14 persons (similar situated person) are receiving the benefit as per order dated 3.1.2004 (Annexure P/5).

9. The Kramonnati order issued by respondent No.2 – Commissioner, Health, has never been cancelled by the Commissioner, Health/Competent Authority/Higher Authority, and respondents No.3 and 4, being subordinate



authorities, do not have the jurisdiction to cancel an order passed by a higher authority. Accordingly, the order dated 09.01.2006 (Annexure P/1) is held to be without jurisdiction and is hereby quashed.

10. By order dated 7.8.2003 (Annexure P/4) petitioner had already been promoted from the post of Deputy Media Extension & Information Officer to post of Media Extension and Information Officer (from the pay scale of Rs.5500-9000/- to pay scale of Rs.8000-13500). The benefit of Kramonnati pay scale on completion of 24 years of service was extended to the petitioner w.e.f. 19.04.1999 by order dated 03.01.2004 (Annexure P/5); therefore, the fixation of the petitioner was carried out in the service book by incorporating the Kramonnati pay scale w.e.f. 19.04.1999, and thereafter, salary was fixed in the promoted pay scale w.e.f. 18.08.2003, i.e., the date on which he joined his promoted post. Before coming into the Kramonnati Vetanman, the petitioner was drawing a basic pay of Rs.7,250/- in the pay scale of Rs.5,500–9,000/-, and thus was rightly fixed in the Kramonnati pay scale of Rs.6,500–10,500/- at the stage of Rs.7,300/-, and the benefit of FR 22-D was not provided to him.

11. The petitioner was forced to give undertaking so that he might get his retiral dues settled expeditiously; therefore, the undertaking dated 27.1.2006 (Annexure R/2) and undertaking dated February, 2006 (Annexure R/5) forcefully obtained, cannot waive the statutory and legal rights of the petitioner to challenge the illegal pay fixation and illegal recovery made from his retirement dues.



12 The Full Bench of this Court, in **State of Madhya Pradesh and others v. Jagdish Prasad Dubey, 2024 (2) MPLJ 198**, has dealt with a similar issue which is held as under:

(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 re-fixation 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 (supra) unless the undertaking is given voluntarily.

13. As per circular dated 19.4.1999, re-fixation was required to be done only where a person is promoted to the same pay scale in which he is placed after Kramonnati. But that is not the issue in the present case, because the petitioner was already promoted, and the benefit of Kramonnati relates to a lower pay scale than the promoted pay scale (i.e., promotion pay scale 8000-13,500/- and Kramonnati pay scale 6,500-10,500/-). By circular dated 18.8.2005, it was clarified that an anomaly had arisen in certain cases of fixation from the Kramonnati pay scale to the promoted pay scale. It was further clarified that if an employee suffers financial loss in pay fixation in the promoted pay scale then his fixation should be done in a manner not to cause any loss to him, and in such cases, the difference of pay may be sanctioned as personal pay.

14. As per circular dated 17.3.1999 or 19.4.1999 the re-fixation was required to be done only where the person is promoted to the same pay scale in which he is being placed after Kramonnati but it is not the issue in the present case because petitioner is already promoted and the benefit of Kramonnati relates to a lower



pay scale than the promoted pay scale. Thus the contention of respondents in this regard is against the facts of the case and is unsustainable.

15. The State of M.P., General Administration Department, issued a circular dated 18.08.2005 (Annexure P/11) clarifying the Kramonnati scheme for Govt. servant. It is stated in the said circular that the anomaly has been found to have arisen in certain cases in fixation from Kramonnati pay scale to promoted pay scale. It is clarified that if the employee is getting financial loss in pay fixation in the promoted pay scale, then his fixation should be done in a manner not to cause any loss to him and in such cases the difference of pay may be sanctioned as personal pay to the employee.

16. The respondents have not denied the facts and ground mentioned in rejoinder by filing additional reply/counter affidavit.

17. In the case of *Asha Bajpai (Smt.) v. State of M.P. and others 2015 3 MPLJ 169 : 2015 2MPWN 75* the relevant para Nos. 6 and 10 of the said order reads as under:

6. In view of aforesaid rival contentions, the basic question is whether petitioner is entitled to get benefit of F.R. 22-D on the scale of 1640-2900 or is entitled to get the said benefit on the scale attached to the post of UDT (1540-2760). Ancillary question based on Annexure R-2 is whether the decision of State Government reproduced in Annexure P-6 is justifiable, which reads as under:-

“.....यदि कोई शासकीय सेवक जिसे विभागीय क्रमोन्नति योजना के अन्तर्गत वरिष्ठ प्रवर श्रेणी वेतनमान में वेतन पाने की अनुमति दी गई है अपने सामान्य वेतन क्रम में नियमित रूप से उच्च पद पर समानवेतनमान में पदोन्नत होता है तो ऐसे पदोन्नति पर



उसका वेतन निर्धारण निम्न पद की सामान्य वेतन श्रेणी में यदि वह कार्यरत रहता ओर वेतन पाता उसके आधार पर मूल नियम 22 डी के अंतर्गत अथवा कमोन्तत वेतनमान में प्राप्त वेतन के संदर्भ में मूल नियम 22(ए) (2) के अंतर्गत इसमें उसे जो भी अधिक लाभ दायक हो किया जावेगा।”

10. The matter may be viewed from another angle. FR 22-A (ii) makes it clear that it is applicable to such appointments where new post does not involve assumption of higher/greater responsibility whereas FR 22-D (I) makes it clear that it is applicable to a post which carries duties and responsibilities of greater importance. At the cost of repetition, it may be noted that the promotional post of Headmistress carries greater responsibility qua the feeder post of UDT. Thus, petitioner's case falls within the ambit of FR 22-D(i) and not under FR 22-A(ii). **Thus the formula devised by the respondents and reproduced in para 6 of this order has no application. Once the petitioner's case is not covered under FR 22-A (ii),** the question of comparing the benefits and granting one benefit does not arise. Putting it differently, FR 22-D(i) begins with non obstante clause. It has an overriding effect on other provisions of Fundamental Rules. Thus, once FR 22-D (I) becomes applicable, it automatically makes the other provision inapplicable in this regard. Thus, the contention of department and ground based on FR 22-A(ii) pales into insignificance. It is noteworthy that when FR came into being, Kramonnati Yojna was not applicable. Thus, intention of law makers was to give benefit on the last pay scale enjoyed by the employee. Accordingly, the petitioner is entitled to get benefit under FR 22-D on the pay scale of Rs.1640-2900.

18. On the basis of aforesaid discussion, the impugned orders dated 19.1.2006 (Annexure P/1) and 28.1.2006 (Annexure P/2) is hereby quashed.

19. Consequently, the respondents are directed to revise/modify the PPO, GPO and other retiral benefits on the basis of the petitioner's last pay of Rs.9,100/- and



accordingly pay the arrears along with interest @ 6% per annum w.e.f. 31.01.2006 till actual payment. The respondents are further directed to refund the amount of Rs.12,300/- to the petitioner. The respondents shall also pay interest @ 6% per annum on Rs.12,300/- w.e.f. 31.01.2006 till actual payment.

20. Let the said exercise as directed above be completed within a period of 90 days from the date of receipt of certified copy of this order.

21. With the aforesaid, the present petition is allowed.

C.C. as per rules.

(Anand Singh Bahrawat)
Judge

Ahmad