



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 3rd OF NOVEMBER, 2025

WRIT PETITION No. 3949 of 2015

SMT. ARUNA KULSHESHTRA

Versus

THE STATE OF MADHYA PRADESH THR AND OTHERS

Appearance:

Shri Surya Pratap Singh – Advocate for petitioner.

Shri Prabhat Pateriya – Dy. Government Advocate for respondent/State.

ORDER

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

- i) That, order impugned dated 12.02.2014 (Annexure – P/1) passed by the respondent No.2 may kindly be quashed with a further direction to the Respondents not to make any recovery from the petitioner keeping in view of the petitioner is eligible to get grade pay of Rs.2800/- as per rules.
- ii) That, the respondents may kindly be further directed to refund the amount if any recovered in view of order Annexure – P/1, in the interest of justice.
- iii) That, any other relief which is suitable in the facts and circumstances of the case in favour of the petitioner including the costs throughout may also be granted.



2. It is submitted by learned counsel for petitioner that initially petitioner was appointed as LDC in the year 1978. Petitioner was promoted as UDC and again was promoted as Accountant by 1995. Petitioner stood retired on 31.10.2014. At the time of retirement, service book was referred to the Joint Director, Treasury, Accounts and Pension Department, Motimahal, to check whether increment of wages and pay fixation was done as per Rules or not and as per their objection, petitioner was wrongly given time-pay scale, therefore, he was not eligible for time pay-scale. On that basis, recovery of Rs.52,679/- has been ordered.

3. Learned counsel for petitioner submits that without giving any show-cause notice or without affording an opportunity of hearing, without following the principle of natural justice and on the basis of objections raised by respondent No.3 & 4/Treasury Officer, respondent issued impugned order of recovery Annexure P-1, calculating recovery to the tune of Rs.52,679/-. Learned counsel for petitioner submits that petitioner stood retired from the post of Accountant which is a Class III post and recovery after retirement of employee is not permissible. It is submitted that alleged excess amount has been paid on account of wrong fixation of salary of petitioner carried out from 01.04.2006 till the date of his retirement i.e.31.10.2014, however, petitioner is not responsible for wrong fixation. To strengthen his submission, learned counsel for petitioner placed reliance on the Full Bench decision of this Court in the case of **State of Madhya Pradesh & others Vs. Jagdish Prasad Dubey** reported in (2024) 2 M.P.L.J.198.

4. *Per contra*, learned counsel for the State opposed the prayer and submitted that the excess amount was paid on account of erroneous fixation of salary and



therefore, the respondents are entitled to recover the amount paid in excess. It is further submitted by him that at the time of preparation of pension papers, he had given consent for recovery in case of excess payment (Annexure R-1). It is further submitted that the said undertaking had been given by petitioner voluntarily therefore the principle laid down by Hon'ble Apex Court in the case of **State of Punjab Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334** is not applicable in case of petitioner.

5. Considered the submissions put forth by learned counsel for the parties and perused the record.

6. The Full Bench of this Court in the case of **Jagdish Prasad Dubey (supra)**, has dealt with the similar issue and held as under:

"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. Converselyan 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 (supra) unless the undertaking is given voluntarily."

7. The Apex Court has also dealt with the similar issue in the case of **Rafiq Masih (White Washer) (supra)**, wherein, the Apex Court held as under:-

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."



8. The Supreme Court in the case of **Jogeswar Sahoo and others Vs. District Judge, Cuttack and others** reported in **2025 (3) M.P.L.J. (S.C.) 25** has held as under:

“11. In the case at hand, the appellants were working on the post of Stenographers when the subject illegal payment was made to them. It is not reflected in the record that such payment was made to the appellants on account of any fraud or misrepresentation by them. It seems, when the financial benefit was extended to the appellants by the District Judge, Cuttack, the same was subsequently not approved by the High Court which resulted in the subsequent order of recovery. It is also not in dispute that the payment was made in the year 2017 whereas the recovery was directed in the year 2023. However, in the meanwhile, the appellants have retired in the year 2020. It is also an admitted position that the appellants were not afforded any opportunity of hearing before issuing the order of recovery. The appellants having superannuated on a ministerial post of Stenographer were admittedly not holding any gazetted post as such applying the principle enunciated by this Court in the above quoted judgment, the recovery is found unsustainable.”

9. The co-ordinate Bench of this Court has already decided the matter pertaining to the undertaking in the case of **Ravindra Kumar Joshi Vs. The State of Madhya Pradesh and others [Writ Petition No.17831/2019 vide order dated 13.05.2024]**, relevant of which is reproduced below for ready reference and convenience:

8.It is brought on record by the respondents that at the time of extending benefit of time scale pay, petitioner has submitted an undertaking which is placed on record by the learned counsel for respondents/State and as per the undertaking, the petitioner had undertaken to repay the amount, if it was found that the same was extended to him erroneously. In the matter of **High Court of Punjab**



and Haryana Vs. Jagdev Singh (supra), the Apex Court has held that if any undertaking is submitted at the time of grant of financial benefits on account of refixation of pay, the amount is refundable to the Government or the same is adjustable in future, and therefore, the action of the respondent/Department appears to be correct. Full Bench of this Court, in the matter of *State of Madhya Pradesh and others Vs. Jadish Prasad Dubey and others (supra)* has answered the question No.3 by holding that the undertaking given by the employee at the time of grant of financial benefits on account of refixation of pay is forced and the same is not forcible in the light of the Judgment of Hon'ble Supreme Court in the case of *Central Inland Water Transport Corporation Ltd. and another Vs. Brojo Nath Ganguly and another (1986) 3 SCC 136*, unless the undertaking is given voluntarily meaning thereby that if undertaking is given voluntarily, recovery is permissible and if undertaking is forced, then no recovery is permissible.

9. In the present matter, respondent/State has not established that petitioner had given undertaking voluntarily. Therefore, the undertaking shall be treated as obtained forcefully and therefore, there is no circumstance available in the case to consider the undertaking, which was not given voluntarily. On the strength of undertaking, recovery can not be affected.”

10. Wrong pay fixation was carried out from 01.04.2006 & petitioner had not furnished undertaking while fixation on 01.04.2006 (as there is no such undertaking appended in the record). In absence of any specific undertaking at the time of making payment of such amount i.e. 01.04.2006, the petitioner would be entitled to the benefit of the dictum of Apex Court in the case of *Rafiq Masih (White Washer) (supra)*. Undertaking (Annexure R-1) was furnished by petitioner after his retirement & he did not furnish any undertaking at the time of extending the benefits of pay to him i.e. 01.04.2006. Thus, it is clear that undertaking was furnished by petitioner at the time of retirement and he did not



furnish any undertaking at the time of extending the benefit of pay to him. The undertaking furnished by petitioner at the time of his retirement cannot be said to be an undertaking for which recovery of excess payment which has been made long back would become effective. The said undertaking would not benefit the respondents and the recovery being made from the petitioner is consequently illegal.

11. Petitioner stood retired on 31.10.2014. Recovery pertains to the period from 01.04.2006 to 31.10.2014 and it was initiated without giving any show-cause notice to him or an opportunity of being heard. Furthermore, petitioner-employee was a Class III employee (Accountant). In view of the aforesaid legal position, the impugned recovery is not permissible. Therefore, while setting aside the impugned recovery, the respondents are directed to refund the amount of Rs.52,679/- to petitioner. The respondents shall pay interest @ 6% *per annum* on Rs.52,679/- w.e.f. the date of retirement till actual payment. Consequently, impugned recovery order Annexure P/1 dated 12.02.2014 is hereby quashed.

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

13. The petition is, accordingly, *disposed of*.

(Anand Singh Bahrawat)
Judge