HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

DIVISION BENCH:

JUSTICE SHEEL NAGU
&
JUSTICE DEEPAK KUMAR AGARWAL
****

WA.293.2021

Smt. Manoj Sharma

Vs.

State of M.P. & Ors

Shri Krishna Kartikey Sharma, learned counsel for appellant.

Shri M.P.S. Raghuvanshi, learned Additional Advocate General, for respondent/State.

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Heard & Reserved on : 08.07.2021

Order pronounced on : 31.08.2021

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Whether Approved For Reporting : Yes

Law laid down:

1. Government servants in service of any class (Class I to Class IV) who had given written undertaking promising to refund the excess amount are not immune from recovery.

2. However the quantum and nature of recovery in such cases is to be limited

to the quantum and nature promised by the employee in the undertaking.

3. If the undertaking does not expressly provide for refund of interest over the principal amount then the interest cannot be recovered from the employee while giving effect to the undertaking.

Significant Paras: 3 to 5

O R D E R

Sheel Nagu, J.

PROLOGUE

The present intra court appeal filed u/S.2(i) of M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 assails the final order dated 22.02.2021 passed in WP 11449/2021 by the learned Single Judge while exercising writ jurisdiction of this Court u/Art. 226 of the Constitution dismissing the petition in question by which challenge was made to the order dated 28.07.2020 by which the employer directed recovery of an amount of Rs.1,07,913/- (the principal amount of excess payment of Rs.57,419 + interest of Rs.50,494/- over the principal amount), which has been paid in excess during the period from July, 2009 to July 2018 to petitioner/a Vanrakshak (Class III emoployee) when wrong fixation was made of increment in 2011 and also due to wrong fixation of pay in 2017.

SUBMISSIONS

2. Learned counsel for petitioner/appellant submits by relying upon the decision of the Apex Court in the case of **State of Punjab & ors. Vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334** that the case of petitioner, who is a serving Class III employee, is covered by the ratio laid down in the said Apex Court decision in Para 18, which is reproduced below for ready reference and convenience:-

> *"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."

2.1 On the basis of aforesaid decision of **Rafiq Masih (supra)**, learned counsel for petitioner/appellant submits that there was no misrepresentation made by petitioner and the wrong fixation of increment in 2011 and wrong fixation of salary in 2017 were for reasons not attributed to petitioner but solely to the employer. Thus, learend counsel for petitioner/appellant urges that the writ Court committed error in rejecting the writ petition.

2.2 Learned counsel for the State on the other hand referring to reply to the writ petition submits that at the time of fixation of increment in 2011 and as well as fixation of salary in 2017, petitioner had furnished written undertaking that in case it is found that the benefit extended is in excess of the due amount then the same can be recovered from the petitioner or in her absence from her legal heirs. These written undertakings have been signed by petitioner in 2009 and 2017 which are on record as Annexure R/1 accompanying the reply of State in WP.

2.3 Learned Single Bench has held that in view of undertakings and the subsequent decision of Apex Court in case of **High Court of Punjab and Haryana Vs. Jagdev Singh AIR 2016 SC 3523**, the earlier decision of **Rafiq Masih (supra)** has been distinguished by holding that the ratio laid down by **Rafiq Masih (supra)** would not

apply to cases of recovery from retired employee who had submitted written undertaking promising to return the excess amount as and when the same is found to be excess in the future. By holding so the Apex Court in the case of **Jagdev Singh (supra)** however directed the employer to make recovery in reasonable instalments from retired employee.

FINDINGS

3. In the instant case, it is not disputed that petitioner/appellant is a Class III employee and continues to be in service and therefore, her case as per learned counsel for petitioner/appellant falls in the cases of recovery from employees belonging to Class III and Class IV category.

3.1 Thus the question before this Court which falls for consideration is as follows:-

> "*Whether the benefit of ratio laid down by Rafiq Masih (supra) would be available in cases of recovery from employees who are still in service and are holding post in Class III category and who had given written undertaking as a pre-condition to grant of payment promising to return any amount which is found to be in excess of entitlement ?"*

3.2 For the purpose of understanding the ratio laid down in the case of **Jagdev Singh (supra)**, it would be apt to reproduce the relevant paragraphs of the said judgment:-

> *" 2. The facts lie in a narrow compass. The Respondent was appointed as a Civil Judge (Junior Division) on 16 July 1987 and was promoted as Additional Civil Judge on 28 August 1997 in the judicial service of the State. By a notification dated 28 September 2001, a pay scale of Rs. 10000-325-15200 (senior scale) was allowed under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2001. Under the rules, each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise.*
>
> *3 The Respondent furnished an undertaking and was granted the revised pay scale and selection grade of Rs. 14300-400-18000-300. While opting for the revised pay scale, the Respondent undertook to refund any excess payment if it was so detected and demanded subsequently. The revised pay scale in the selection grade was allowed to the Respondent on 7 January 2002.*
>
> *4 The Respondent was placed under suspension on 19 August 2002 and eventually, was compulsorily retired from service on 12 February 2003.*

5 In the meantime, this Court in Civil Writ (C) 1022 of 1989 accepted the recommendations of the First National Judicial Pay Commission (Shetty Commission). Thereupon, the Haryana Civil Services (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2003 were notified on 7 May 2003.

6 In view thereof the pay scales of judicial officers in Haryana were once again revised with effect from 1 January 1996. An exercise was undertaken for adjustment of excess payments made to judicial officers, following the notification of the revised pay rules. On 18 February 2004, a letter for the recovery of an amount of Rs. 1,22,003/- was served upon the Respondent pursuant to the direction of the Registrar of the High Court.

7 The Respondent challenged the action for recovery in writ proceedings under Article 226. The petition was allowed by the impugned judgment of the High Court. The High Court found substance in the grievance of the Respondent that the excess payment made to him towards salary and allowance prior to his retirement could not be recovered at that stage, there being no fraud or misrepresentation on his part.

8 The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the Respondent in these proceedings, this position has been specifically admitted. Subsequently, when the rules were revised and notified on 7 May 2003 it was found that a payment in excess had been made to the Respondent. On 18 February 2004, the excess payment was sought to be recovered in terms of the undertaking.

9 The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab & Ors. vs. Rafiq Masih (White Washer) this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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." (emphasis supplied).

> *11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.*
>
> *12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.*
>
> *13 The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs. ”*

3.3 The subsequent decision in **Jagdev Singh (supra)** was a case of a Civil Judge (Junior Divison) who had been extended pay-scale of higher judicial service and was compulsorily retired in 2003 against whom impugned recovery was made from sometime in 2004-05 of an amount of Rs. 1,22,003/-. It was found by the Apex Court that the said Civil Judge during the time of receipt of excess payment during his service tenure had furnished written undertaking for adjustment of excess amount, if found due in future. In this factual background, the Apex Court in **Jagdev Singh (supra)** differs with it's earlier verdict in **Rafiq Masih (supra)** and holds that if a written undertaking has been given promising to return the excess amount, if found due, then recovery of excess amount can be effected even after retirement, since the retired employee was put to notice and is bound by her/his undertaking.

3.4 Petitioner/appellant herein is not a retired employee but is still in service. However, the petitioner had given written undertakings in 2009 and 2017 as explained above and thus to that extent bound herself.

3.5 Since the Apex Court in the case of **Jagdev Singh (supra)** held that recovery can be made even from retired employees without specifying the Class of employees (Class III, Class IV or any other Class) then the necessary inference which can be drawn is that clause (ii) of Para 18 of **Rafiq Masih (supra)** by employing the expression “retired employees” or “employees who are deemed to retire within one year”, includes within

it's sweep and ambit all categories of employees irrespective of the Class. Clause (ii) of Para 18 of **Rafiq Masih (supra)** which stands explained by **Jagdev Singh (supra)** does not grant immunity from recovery to retired employees or employees who are retiring within one year of the excess payment in cases where they have submitted written undertaking for making recovery.

3.6 Thus, if the factor of existence of written undertaking pervades all Classes of employees (from Class I to Class IV) who have either retired or are retiring within one year of the order of recovery, then this Court sees no reason as to why the same factor (of existence of written undertaking) should not apply and bind Class III or Class IV employees provided vide Clause (i) of Para 18 of **Rafiq Masih (supra).**

3.7 A written undertaking by an employee binds the employee in the future. This ensures that public money if paid to an employee in excess of the amount due can be returned and credited to the public exchequer, the place where it actually belongs. This may cause inconvenience to the employee especially when the time gap between the making of excess payment and it's recovery is long. However, it cannot be lost sight of that the excess payment made and enjoyed by the employee concerned neither belongs to the employee nor to the accountant or the officers making the excess payment but to the State. The excess payment has to reach it's rightful place so that the same can be used in public interest.

3.8 In the conspectus of above analysis, this Court has no hesistation to hold that the excess payment given to petitioner at the time of grant of increment in 2011 and during fixation of pay in 2017 deserves to be recovered.

4 The only question which now remains to be answered is as to whether it was lawful on the part of the employer to have also recovered the interest over the excess payment.

4.1 For answering this question, a close scrutiny of written undertakings is

necessary.

4.2 The two undertakings given by petitioner in 2009 and 2017 are reproduced below for ready reference and convenience:-

Undertaking given in 2009

पप्रत्र –तीन

वचन पत्र (Undertaking)

मुझे यह ज्ञात है कि दिनांक 01/01/2006 से स्वीकृत मध्यप्रदेश वेतन पुनरीक्षण नियम, 2009 के प्रावधानों के अन्तर्गत मेरा जो वेतन नियतन अभी पुनरीक्षित वेतन ढॉचे में किया गया है वह अनन्तिम (Provisional) हैं। मैं वचन **देता/देती** हूॅ कि मैं राज्य शासन को वह संपूर्ण राशि जो कि वेतन नियतन में अनियमितता के कारण तथा अन्य कोई भी धनराशि जो कि इस प्रकार वेतन नियतन के कारण मुझे अधिक भुगतान की गई हो, शासन के निर्देशों के अनुरूप निर्धारित राशि वापस करूं**गा/क**रूंगी तथा इस प्रकार की राशि मेरे देय स्वत्वों से जिनमें पेंशन ग्रेच्यूटी एवं अवकाश नगदीकरण की राशि भी सम्मिलित है, काटी जा सकेगीं। मैं यह भी वचन **देता/देती** हूं कि यदि उक्तानुसार मेरे द्वारा देय राशि को मैं लौटाने में असमर्थ **रहता/रहती** हूॅ तो इस देय राशि की वापसी के लिये मैं अपने उत्तराधिकारियों, निष्पादकों, प्रतिनिधियों और समनुदेशितियों को आबद्ध **करता/करती** हैं। मैं यह भी सहमति **देता/देती** हूं कि मेरे द्वारा देय राशि मुझसे राजस्व की बकाया के रूप में वसूल कर ली जावे।

साक्षी :– हस्ताक्षर शासकीय कर्मचारी

हस्ताक्षर :– पदनाम

पता :– स्थान

दिनांक ..... दिनांक .....

Undertaking given in 2016

पप्रत्र –तीन

वचन पत्र (Undertaking)

मुझे यह ज्ञात है कि दिनांक 01/01/2016 से स्वीकृत मध्यप्रदेश वेतन पुनरीक्षण नियम, 2017 के प्रावधानों के अन्तर्गत मेरा जो वेतन नियतन अभी पुनरीक्षित वेतन मेट्रिक्स में किया गया है वह अनन्तिम (Provisional) हैं। मैं वचन **देता/देती** हूॅ कि मैं राज्य शासन को वह संपूर्ण राशि जो कि वेतन नियतन में अनियमितता के कारण

तथा अन्य कोई भी धनराशि जो कि इस प्रकार वेतन नियतन के कारण मुझे अधिक भुगतान कि गई है, शासन के निर्देशों के अनुरूप निर्धारित राशि वापस करूंगा/करूंगी तथा इस प्रकार की राशि मेरे देय स्वत्वों से जिनमें पेंशन, ग्रेच्यूटी एवं अवकाश नगदीकरण की राशि भी सम्मिलित है, काटी जा सकेगी। मैं यह भी वचन देता/देती हूं कि यदि उक्तानुसार मेरे द्वारा देय राशि को मैं लौटाने में असमर्थ रहता/रहती हूँ, तो इस देय राशि की वापसी के लिए मैं अपने उत्तराधिकारियों, निष्पादकों, प्रतिनिधियों और समनुदेशितियों को आबद्ध करता/करती हूं। मैं यह भी सहमति देता/देती हूं कि मेरे द्वारा देय राशि मुझसे राजस्व की बकाया के रूप में वसूल कर ली जाए।

साक्षी :–	हस्ताक्षर शासकीय कर्मचारी
हस्ताक्षर :–	पदनाम
पता :–	स्थान
दिनांक	दिनांक .....

4.3 A microscopic reading of undertakings reveals that petitioner has undertaken to return the amount which is found to be in excess of amount due but there is no undertaking in regard to recovery even of interest over the excess payment was given.

4.4 In both written undertakings as aforesaid, there is no promise extended by petitioner for recovery of interest over the excess payment and therefore, it is explicit that petitioner had undertaken to return the amount which is found to be in excess of amount due but there was no undertaking for returning the interest over the said excess amount.

4.5 Since the immunity extended to Class III employees by the decision of **Rafiq Masih (supra)** was diluted by **Jagdev Singh (supra)** in cases where written undertaking had been furnished, it can safely be held that if the written undertaking does not contain any promise to return the interest amount, which may have accrued, then the employer is estopped in view of decision of **Rafiq Masih (supra)** and **Jagdev Singh (supra)** to make any recovery of interest over the excess principal amount paid to petitioner in the past.

5. The aforesaid arrangement of preventing the employer from recovering interest over and above the amount for which undertaking was given, would serve dual purposes. It shall prevent wastage of public money by enabling the employer to recover the principal amount as promised vide undertaking and also would prevent undue enrichment of the employer by means of interest. An argument may be raised that once an undertaking is given, may be, for refund of excess principal amount then the employee concerned is also liable to pay interest for having retained public money for number of years before refunding the same. The argument ostensibly appears to be attractive but in reality and from practical point of view is neither viable nor feasible. The reason being that the undertaking is limited to the recovery of principal amount of excess payment. The other reason is that there was no misrepresentation on the part of employee to retain and consume the excess amount for number of years. Thus, at the time of refund, the employee ought not to be additionally burdened by recovery of interest over and above the principal amount. Therefore, from the point of view of equity, good conscience and fair play, the amount of recovery which the employer is liable to make based on undertaking in writing, would be limited to the quantum and nature of the amount promised to be refunded in the undertaking. In this view of the matter, it would be in the interest of justice and to prevent undue enrichment of either of the parties, that the quantum and nature of recovery in such cases is limited to the quantum and nature of recovery promised in the written undertaking to be refunded.

6. From the aforesaid analysis what comes out loud and clear is that the employer is entitled in the face of written undertakings given by petitioner/appellant to reocver the principal amount of excess payment of Rs. 57,419/- but not the interest amount of Rs.50,494/-.

7. Consequently, this Court **allows** the present writ appeal to the following extent:-

(i) The impugned order 22.02.2021 passed in WP 11449/2021 by learned Single

Judge so far as it permits recovery of principal amount of excess payment of Rs.57,419/- is upheld.

(ii) The impunged order of writ court dated 22.02.2021 passed in WP 11449/2021 and the impugned order dated 28.07.2020 vide P/1 is set aisde to the extent it permits recovery of amount of interest of Rs. 50,494/-.

(iii) Recovery of principal excess amount can be made from petitioner/appellant in easy instalments. However, if recovery of interest amount has already been made then the same be refunded to the petitioner/appellant forthwith.

(iv) No order as to cost.

(Sheel Nagu)
Judge
(31/08/2021)

(Deepak Kumar Agarwal)
Judge
(31/08/2021)

Ojha