



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 22nd OF APRIL, 2025

WRIT PETITION No. 2179 of 2025

MIRJA AQIB BEG

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Saurabh Bhelsewale – Advocate for petitioner.

Shri Ajay Kumar Nirankari – Government Advocate for respondents/State.

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

“(i) That, the respondent authorities may kindly be directed to return the money which has been deducted from the retiral dues of the present petitioner in pursuance of the letter dated 24/05/2022 (Annexure – P/1) and to set aside and quashed the abovementioned order or all other orders of recovery (if any) qua petitioner in the light of law laid down by Hon'ble Supreme Court in case of **State of Punjab Vs. Rafiq Masih reported in 2014(4) SCC 334**

(ii) That, the respondent authorities may kindly be directed to pay all the retiral dues pension benefits to the petitioner in a time



bound manner. Otherwise interest at the rate of 7.5% shall be payable to the petitioner by respondents.

(iii) That, any other relief deemed fit and proper in the facts and circumstances of the case.

(iv) That, cost may also be awarded.”

2. It is submitted by counsel for the petitioner that by impugned order dated 24.05.2022, Superintendent of Police, Morena, has directed for recovery of Rs. 2,41,766 (Rs. 1,71,967 as principal + Rs. 69,799 as interest) on the ground of excess payment due to erroneous fixation of salary. It is submitted by counsel for the petitioner that petitioner has retired from the post of Head Constable. In light of the judgment passed by the Supreme Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others** reported in **(2015) 7 SCC 334**, the amount which was erroneously paid to the petitioner without any misrepresentation on his part cannot be recovered.

3. *Per contra*, counsel for the State, after relying upon the undertaking given by the petitioner on the date of retirement, has submitted that since the petitioner had given an undertaking at the time of retirement, therefore, in light of the judgment passed by the Supreme Court in the case of **High Court of Punjab and Haryana vs. Jagdev Singh** reported in **(2016) 14 SCC 267**, the excess payment made to the petitioner can be recovered.

4. Heard learned counsel for the parties.

5. The Full Bench of this Court in the case of **The State of MP & Ors. Vs. Jagdish Prasad Dubey** in W.A. No. **815/2017 (Principal Seat)** on **6/3/2024** has held 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 re-fixation. 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 re-fixation 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 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 and Another vs. Brojo Nath Ganguly and Another, reported in (1986) 3 SCC 136 unless the undertaking is given voluntarily.”

Thus, it is clear from the judgment passed by the Full Bench of this Court in the case of **Jagdish Prasad Dubey** (Supra) that an undertaking given at the stage of payment of retiral dues with reference to the re-fixation of pay or increments done decades ago cannot be enforced.

6. Thus, it is clear that the undertaking taken from petitioner at the time of retirement cannot be utilised by the respondents to recover the excess payment made to the petitioner much prior thereto. Furthermore, it is not the case of the respondents that the petitioner was guilty of any misrepresentation.

7. Considering the totality of facts and circumstances of the case, and in the



light of the judgment passed by the Supreme Court in **Rafiq Masih (supra)** as well as the Full Bench of this Court in **Jagdish Prasad Dubey (supra)**, the order of recovery dated 24/05/2022 (Annexure P/1) cannot be upheld and, accordingly, it is quashed. It is made clear that in case any recovery has already been effected, either in part or in toto, then the said amount shall be repaid to the petitioner within a period of three months from today, failing which the delayed payment shall carry interest at the rate of 6% per annum.

8. The petition succeeds and is, hereby, allowed.

(G. S. AHLUWALIA)
JUDGE

(and)