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WP-4990-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 10th OF JULY, 2025

WRIT PETITION No. 4990 of 2016

NARAYAN SEN

Versus

FINANCE DEPARTMENT AND OTHERS

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Appearance:

Shri Vibhor Khandelwal - Advocate for the petitioner.

Shri Shrey Raj Saxena - Dy.AG for State.

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ORDER

The petitioner is challenging the order of recovery dated 7.10.2015 passed by respondent No.4 whereby respondent No.4 has directed recovery of the amount paid to the petitioner in excess of his salary by way of second time scale pay, after the retirement of the petitioner.

The said recovery is being sought on account of excess payment made to the petitioner in excess of his salary by way of second time scale pay, after the retirement of the petitioner as per the clarification issued by the respondent No.2 vide its letter bearing No.3324030/14/2515 on 17.11.2015.

Learned counsel for the petitioner submits that the petitioner is a retired class III employee and the recovery on account of erroneous pay fixation cannot be made in the light of the judgment passed by the Apex Court State of Punjab Vs. Rafiq Masih (2015) 4 SCC 334 and other judgments. It is further submitted that there is no fraud or misrepresentation



on behalf of the petitioner.

Learned counsel for the respondent/state submits that the recovery is being sought to be made on the basis of an undertaking given by the petitioner at the time of pay revision.

Upon perusal of the undertaking, which has been filed as Annexure R/2 along with the reply, this Court finds that no date is mentioned in the said undertaking.

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 & Anr. vs. Jagdish Prasad Dubey & Anr.)* 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."

In view of the aforesaid, answer of the full Bench the recovery on the basis of an undertaking/indemnity bond the recovery cannot be made on the earlier fixation of pay. Apart from that the recovery of the excess amount paid as salary cannot be recovered from a retired Government servant. Admittedly in the present case procedure for recovery prescribed under Rule 65 and 66 of Chapter VIII of M.P. Civil Services Pension Rules, 1976 are not followed.

Counsel for the petitioner submits that the the recovery from the petitioner cannot be made as there is no misrepresentation or fraud committed by the petitioner in fixation of pay. He has relied on the judgment passed by the Apex Court in the case of *Shyam Babu Verma Vs. Union of india*, 1994(2) SCC 521, *Sahib Ram Vs. State of Haryana* , 1995 Supp (1) SCC 18, *Chandi Prasad Uniyal Vs. State of Uttarakhand*, (2012) 8 SCC 417 and *Syed Abdul Kadir Vs. State of Bihar*, (2009) 3 SCC 475 and *Yogeshwar Prasad Vs. National Institute of Education Planning*, (2010) 14 SCC 323.

In view of the above, the impugned recovery order dated 7.10.2015 is hereby quashed. The pay fixation of the petitioner is however, maintained. If the pension of the petitioner is withheld only because of the recovery, the respondent shall finalise the pension case of the petitioner and shall issue PPO and make the payment in accordance with law.



The petition is accordingly allowed and disposed off.

(VIJAY KUMAR SHUKLA)
JUDGE

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