



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

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 27<sup>th</sup> OF SEPTEMBER, 2024**

**W.P.NO.7901/2018**

**NARENDRA SINGH**

**Versus**

**INDORE MUNICIPAL CORPORATION & ANOTHER**

**Appearance:**

***Shri O.P.Solanki- Advocate for the petitioner.***

***Shri Aniket Naik-Advocate for respondents.***

**ORDER**

**1]** This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking following relief:-

“7.1 यह कि, यह रिट, आदेश या निर्देश जारी किया जावे कि, परिशिष्ट पी/7, पी/8 एवं पी/9 का आदेश, जिसके द्वारा प्रार्थी के सेवालाभों से राशि रूपये 2,17,668/- की वसूली की कार्यवाही की गयी है, उक्त कार्यवाही अवैध, मनमानी और प्राकृतिक न्याय के सिद्धान्तों के विपरित होने से अवैध एवं शून्य है एवं उक्त विवादित राशि का भुगतान पुनः प्राप्त करने का अधिकारी होने से प्रतिप्रार्थीगण इस विवादित राशि का पुनः भुगतान करे।

7.2 यह कि, यह रिट, आदेश या निर्देश जारी किया जावे कि, प्रार्थी दिनांक 21/05/1985 से मस्टर बेलदार के पद पर पदस्थ होकर लगातार कार्यरत होने से एवं सीनियर क्लर्क के पद से सेवानिवृत्त होने के आधार पर मूल वेतन 12,440/- एवं उसके अनुसार अंतिम वेतन के आधार पर उक्त वेतनमान के आधार पर पेंशन का निर्धारण किया जाकर उक्तानुसार पेंशन का निर्धारण किया जावे।

7.3 यह कि, प्रार्थी को प्रकरण की परिस्थितियों को देखते हुए अन्य कोई योग्य सहायता जो माननीय न्यायालय प्रार्थी को दिलवाना आवश्यक समझे दिलवायी जावे।”



2] At the outset, counsel for the petitioner has submitted that he does not wish to press relief no.7.2. However, in respect of relief no.7.1, it is submitted that recovery has been effected by the respondents vide Annexure P-7 and Annexure P-8, which are the audit reports, whereby, the recovery to the tune of Rs.2,17,668/-, has been deducted from the pension amount of the petitioner.

3] The facts of the case are that since 1990, the petitioner was being given the benefit of one increment on the ground of Hindi typing, although he has not passed the same, otherwise, if he does not pass the same, he would have obtained the said benefit after the age of 40 years. Thus, the the respondents' case is that the petitioner was entitled to the claim of benefit of hindi typing test from 1996, instead of 1990.

4] Counsel for the petitioner has submitted that the petitioner has attained the age of superannuation and has retired on 31.8.2016, whereas undertaking was obtained from the petitioner only on 29.7.2016, *i.e.*, only one month prior to his retirement.

5] Counsel for the petitioner has also drawn attention of this Court to decision rendered by the Full Bench of this Court at Principal Seat, Jabalpur in the case of **State of M.P. and others Vs. Jagdish Prasad Dubey reported as 2024(2) MPLJ 198.**

6] Shri Aniket Naik, learned counsel appearing for the respondents has opposed the prayer, and it is submitted that the respondents have not committed any illegality as they are entitled to recover the aforesaid amount as provided under Rule 65 and 66 of the M.P. Civil Services (Pension) Rules 1976 and has also submitted that even in the



case of **Jagdish Prasad Dubey (supra)** the Full Bench has taken note of the aforesaid Rules in para 7 of the judgement which reads as under:-

“7.(a) Rule 65 of the Rules of 1976 indicates "every retiring Government servant". The same would therefore imply that it does not include a retired Government servant. The interpretation of the same was considered in the case of Vijay Shankar Trivedi Vs. State of Madhya Pradesh reported in 2018 (3) MPLJ 453 wherein it was held in paras 17 and 18 as follows:-

"17. On perusal of the aforesaid, it is clear that sub-rule (1) specifies the dues of "retiring" Government servant while sub-rule (2) deals the deposit or deduction from the gratuity payable to "retiring" Government servant, therefore, Rule 65 deals the contingency casting the duty on the "retiring" Government servant as well as on the Government, it is nothing to do with the "retired" Government servant. It do not postulate the contingency which may be made applicable after retirement of the employee.

18. Learned Government Advocate made an attempt referring Rule 66(3)(a) of the Pension Rules to contend that the words "retiring employee" would be deemed to be continued even after retirement upto the period of six months. After going through the entire Rule 66, it can safely be held that Rule 66(3)(a), (b) and (c) applies to deal with a situation, after retirement of the Government employee. In case the formalities as specified in Rule 66(1)(a) and (b) and Rule 66(2) (a), (b) and (c) has been observed by the Government then what would be the validity period of the undertaking and effect of the amount so deposited by such employee for the purpose of recovery of Government dues, if any from him, otherwise as per sub-rule (4), the legal procedure which is permissible under the law can be taken. In view of the foregoing discussion repelling the argument of learned Government Advocate, the questions posed for answers hereinabove are decided in favour of the petitioner and against the State Government."



(b) Sub-rule 3(a) of Rule 66 of the Rules of 1976 provides that efforts should be made to adjust the Government dues not exceeding six months from the date of retirement, failing which it shall be presumed that no Government dues are recoverable except house rent and water charges. Therefore, the rules provide for an entire mechanism to be followed. The authorities are required to follow the same. There cannot be any deviation from the same.”

Thus, it is submitted that no case for interference is made out.

7] In rebuttal, Shri Solanki, learned counsel for the petitioner has relied upon para 35(b) in the case **Jagdish Prasad Dubey (supra)** wherein it is held that “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”.

8] Heard. Having considered the rival submission and on perusal of the record, this Court finds that admittedly, the petitioner stood retired after attaining the age of superannuation on 31.8.2016, whereas undertaking was obtained from him on 29.7.2016 only. Thus, it is apparent that at the fag end of his service, when the petitioner was expecting to receive all the retiral dues from the respondents, thus, he was compelled to sign all such documents which would facilitate the expeditious payment of his retiral dues, and in such circumstances, it cannot be said that consent obtained from him was a free consent.

9] So far as the submissions as advanced by Shri Naik, learned counsel for the respondents regarding applicability of Rule 65 and 66 of Rules 1976 is concerned, apparently the aforesaid aspect of



the matter has already been taken into account by the Full Bench in the case of **Jagdish Prasad Dubey (supra)** in para 35 (b). Apart from that even para 35(a) would be applicable in the present case as petitioner was a class III employee, and admittedly, the recovery sought to be made from the petitioner is for the period 1.1.1996 to 31.8.2016, to the tune of Rs.2,17,668/-. Para 35(a) in the case of **Jagdish Prasad Dubey (supra)** reads 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. 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 (supra) unless the undertaking is given voluntarily.”

10] In view of the same, this court is of the considered opinion that the present case is squarely covered by the decision rendered by the Full Bench in the case of **Jagdish Prasad Dubey (supra)**, and accordingly, the petition stands allowed, and the recovery to the tune of Rs.2,17,668/- already made from the petitioner is hereby quashed and the respondents are directed to remit the aforesaid amount to the petitioner within a period of three months. The aforesaid amount shall be refunded to the petitioner along with interest @ of 6% per annum.

11] With the aforesaid, the petition stands **allowed**.

**(SUBODH ABHYANKAR)**  
**JUDGE**

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