

HIGH COURT OF MADHYA PRADESH :INDORE BENCH

W.P. No.26972/2019

(Smt. Sobha Jadhav Vs. State of M.P. & Ors.)

Indore dated :11.12.2019

Smt. Neerja L.C. Patne, learned counsel for the petitioner.

Shri Arvind Sharma, learned Govt. Advocate for the respondent/State.

Heard.

By this petition, the petitioner who was retired from the post of Head Clerk from the office of respondent no.2 has challenged the impugned recovery order 28/12/2017 only on the ground that the petitioner is not liable to pay the interest.

Learned counsel appearing for the petitioner submits that though in terms of the impugned order, the respondents are entitled to recover the excess payment which was made on account of wrong pay fixation, but since the petitioner is not responsible for wrong pay fixation, therefore, they cannot recover the interest from her and in this regard, she has placed reliance upon the judgment of the coordinate Bench dated 13/09/2017 in WP No.826/2017 in the case of **Rajendra Bhawsar Vs. State of M.P. and others** as affirmed by the Division Bench by order dated 06/08/2018 passed in WA No.120/2018.

Learned Govt. Advocate for the State has opposed the petition.

Having heard the learned counsel for the parties and on the perusal of the record, it is noticed that by the impugned order the recovery has been directed on account of the fact

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that since July 2006 the petitioner was paid the excess amount due to wrong pay fixation. The order reveals that the excess amount paid to the petitioner was to the tune of Rs.18,88,902/-, whereas the interest charged on the said amount is to the tune of Rs.9,94,233/-. The record reflects that the excess payment was not made to the petitioner on account of any fault or misrepresentation by him.

The coordinate Bench in the matter of **Rajendra Bhawsar (supra)** considering the similar circumstances has held that:-

“The petitioner has filed present writ petition being aggrieved by the order dated 23/01/2017, by which, the respondent/s have recovered the amount of Rs.3,87,698/- from his retiral dues.

2. The petitioner was appointed on the post of Assistant Sub-Inspector of Police (Ministerial) on 23/04/1979. Thereafter, he was promoted to the post of Sub-Inspector of Police and retired from service w.e.f. 01/08/2016. At the time of settlement of retiral dues, the respondent recovered the amount of Rs.3,87,698/-, hence the present petition before this Court.

3. The respondent have filed return. The petitioner was given the benefit of ad-hoc increment of Rs. 70/- per month. The said mistake was discovered by the Treasury Office at the time of settlement of retiral dues. As per the circular dated 25/03/2006, the petitioner was not entitled to get the benefit of ad-hoc increment of Rs. 70/-, which was paid at the time of pay fixation in the year 1981. The said mistake has been perpetuated till his retirement. Since the petitioner was not entitled for the said amount, it has rightly been recovered from the retiral dues of the petitioner.

4. Shri L.C. Patne, counsel for the petitioner has placed reliance over the judgment delivered in the case of **State of Punjab and Others Vs. Rafiq Masih reported (2014) 8 SCC 883**, and submitted

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that the respondent has recovered the amount paid in excess to the petitioner, but they are not justified in recovering the interest amount from the petitioner as he was not at fault in getting the said increment. The respondent has illegally deducted the interest amount of Rs.1,64,990/-, therefore, at least recovery of interest may kindly be set aside.

5. In the case of High Court of ***Punjab and Haryana and others Vs. Jagdev Singh reported in 2016 SCC Online SC 748***, the Apex Court has held that where 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, then he is bound by the undertaking, then recovery should be made in reasonable installments. The Apex Court has quoted the judgment passed earlier in the case of ***State of Punjab Vs. Rafiq Masih***, where recovery was held impermissible in law in case of Class-III and IV employees.

“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 etc. vs. Rafiq Masih (White Washer) etc*¹. 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,

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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 installments. We direct that the recovery be made in equated monthly installments spread over a period of two years."

6. It is true that the respondent may recover the excess amount from the retiral dues after his retirement in certain occasion, but petitioner was not at fault in getting *ad-voc* increment of Rs. 70/-. The respondent has recovered the amount paid in excess to the petitioner, but they have wrongly recovered the interest amount. Since the petitioner was not at fault, hence he is not liable to pay the interest, therefore, the respondents are directed to refund the interest amount of Rs. 1,64,990/- to the petitioner within a period of 60 days from the date of production of certified copy of this order.

Present petition stands disposed of accordingly."

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The above order of the coordinate Bench has been affirmed by the Division Bench by order dated 06/08/2018 passed in WA.No.120/2018.

Since in the present case also, the excess payment was made to the petitioner for none of her fault and the said payment was continued to be made from July 2006 till 2019 when the recovery was directed. Therefore, I am of the opinion that though the respondents are entitled to recover the principal amount of excess payment but they are not entitled to charge interest thereon.

Hence, for the detailed reasons which are assigned in the order of the coordinate Bench in the case of **Rajendra Bhawsar (supra)**, the present writ petition is also **partly allowed** and the impugned order so far as it relates to charging the interest on the principal amount is set aside.

C.c. as per rules.

(Ms. Vandana Kasrekar)
Judge

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