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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 2nd OF DECEMBER, 2024WRIT PETITION No. 789 of 2021*RADHESHYAM VERMA**Versus**STATE OF M.P. AND OTHERS*

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Appearance:

Ms.Anjali Jamkhedkar - advocate for the petitioner.

Shri Prakhar Trivedi - PL for State.

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ORDER

The petitioner is challenging the impugned order dated 27.8.2020 and 1.12.2020 issued by respondent No.3 by which alleging wrong fixation of pay, the recovery of payment of Rs.1,44,018/- including interest of Rs.66,961/- has been initiated.

Counsel for petitioner submits that the aforesaid recovery is being made on account of wrong fixation of pay and the said recovery has been initiated on the objection raised by Jt. Director, Treasury and Accounts. The aforesaid recovery has been directed to be made without any show cause notice or opportunity of hearing. Out of total recovery amount Rs.30,113/- has already been recovered and now by the impugned order the respondents is going to recover balance amount of Rs.1,44,018/-. The petitioner is a Class III employee. It is argued that the aforesaid recovery from the petitioner is illegal and arbitrary.



Counsel for respondents submits that the petitioner has been granted one increment when he was promoted on the post of Pradhyaan Aarakshak. The Jt. Director, Treasury, Accounts and Pension has taken objection and has clarified the position that petitioner was entitled for Rs.8720 + 2400 and has wrongly been paid Rs.9060 + 2400 till July, 2014.

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 and Another vs. Jagdish Prasad Dubey and Another) 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 the case of *Shyam Babu Verma vs. Union of India, (1994) 2 SCC 521*, the Apex Court while observing that the petitioners therein were not entitled to the higher pay scales, had come to the conclusion that since the amount has already been paid to the petitioner, for no fault of theirs, the said amount shall not be recovered by the respondent/Union of India. The observation made by the Apex Court in the said case is as under:-

"Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-506 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them."

(emphasis supplied)



In the case of *Sahib Verma vs. State of Haryana (1995) Supp. (1) SCC 18*, the Apex Court once again held that although the employee did not possess the required educational qualification, yet the Principal granting him the relaxation,, had paid the salary on the revised pay scale. It was further observed that the said payment was not on account of misrepresentation by the employee, but by a mistake committed by the department and, therefore, the recovery could not have been made. The relevant observation of the Apex Court is reproduced as under:-

"Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which appellant cannot be held to be fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

In the case of *Syed Abdul Kadir vs. State of Bihar (2009) 3 SCC 475*, the Apex Court held that recovery of excess payment from a retired government servant cannot be made if there is no mis-representation or fault on the part of the employee.

It is not the case of the respondents that the aforesaid payment was made to the petitioner because of any misrepresentation or fraud played by the petitioner. Considering the aforesaid, recovery order is quashed. However, this court has not held that the petitioner is entitled for the pay fixation which was wrongly fixed. The respondents are directed to refund



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the recovered amount from the petitioner along with 6% interest from the date of recovery till the date of payment. Let the aforesaid exercise be done within a period of three months from the date of communication of the order passed today. The petition is **allowed and disposed off**.

(VIJAY KUMAR SHUKLA)
JUDGE

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