



1

WA-594-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 17th OF APRIL, 2025

WRIT APPEAL No. 594 of 2025

THE MP STATE AGRICULT MARKETING BOARD AND OTHERS

Versus

SANTOSH KUMAR RATHORE AND OTHERS

.....
Appearance:

Shri Rohit Jain - Advocate for the appellants.

Shri Sanjay K. Agrawal - Senior Advocate assisted by Ms. Sharon

Agrawal - Advocate for the respondent.

Shri Ritwik Parashar - Government Advocate for State.
.....

ORDER

Per. Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice

Learned counsel appearing on behalf of appellants submits that the writ petitioner was initially inducted in service on the post of Nakedar in the year 1985 with having qualification of 8th pass. A career advancement scheme was introduced by the Government to overcome the stagnation policy therefor. The said scheme provided that financial upgradation is to be extended to the employee who has the required qualification of promotional post. Clause 4 of the Circular dated 24.1.2008 which is relevant is reproduced hereunder :-



"इस योजनान्तर्गत उच्चतर वेतनमान का लाभ प्राप्त करने के लिये शासकीय सेवक को उन अर्हताओं को पूर्ण करना होगा जो पदोन्नति के लिये निर्धारित है। यदि सेवा भर्ती नियमों के अंतर्गत जिस संवर्ग में पदोन्नति होती है उसका वेतनमान इस योजना के अन्तर्गत स्वीकृत उच्चतर वेतनमान से भी उच्चतर है तो सीधी भर्ती वाले संवर्ग का श्रेणीकरण कनिष्ठ श्रेणी वरिष्ठ श्रेणी तथा प्रवर श्रेणी जैसा उपयुक्त हो, में किया जायेगा। यदि इस योजनान्तर्गत देय उच्चतर वेतनमान पदोन्नत संवर्ग के वेतनमान से उच्चतर है, तो इस योजना अन्तर्गत प्राप्त होने वाला उच्चतर वेतनमान व्यक्तिगत वेतन के रूप में ही देय होगा और इसके लिये सेवा भर्ती नियमों में सीधी भर्ती वाले संवर्ग का पथक से श्रेणीकरण करने की आवश्यकता नहीं होगी।"

2. It is not in dispute that the writ petitioner is not having the qualification for the promotional post, i.e. Mandi Inspector. However, qualification for the post is Matric Pass or High School Pass. As argued by the counsel for appellant that due to inadvertence or by mistake, the benefit of the second time-scale of pay was extended to the writ petitioner. The aforesaid aspect has not been disputed by the writ petitioner. The relevant qualification of Mandi Inspector in terms of the Madhya Pradesh State Mandi Board Services Regulations, 1998 is as under:

"1 किसी मान्यता प्राप्त विश्वविद्यालय से स्नानकोत्तर । 2 किसी मान्यता प्राप्त विश्वविद्यालय से स्नातक ।"

3. It is not in dispute that since writ petitioner was not having the qualification, he was not entitled for grant of said benefit.

4. The writ Court has considered the rival contentions of the parties and observed that as far as the recovery to be made from the petitioner pursuant to the impugned order concerned, it is a case where the benefit was extended to the petitioner vide order dated 30.12.2011 with effect from 01.04.2006. The said order was directed to be withdrawn vide impugned



order dated 10.12.2018, i.e. after a lapse of almost 07 years from the date of issuance. No material is produced on record that the petitioner has ever misrepresented with the authorities asking for the said benefit. The petitioner being Class-III employee is also not disputed by the appellant-State authorities. Accordingly, the writ Court disposed the petition in terms of the judgment passed by the Hon'ble Supreme Court in the case of Rafiq Masih reported in 2015(4) SCC 334 wherein certain guidelines have been framed which are as under :-

"It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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, 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."

5. The judgment in the case of Rafiq Masih (supra) was further considered by the Full Bench of this Court in the case of Jagdish Prasad Dubey (supra) and it is held 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.

6. First of all there was no misrepresentation from the writ petitioner, second there was no undertaking given by the petitioner that excess amount if any paid shall be refunded to the appellant-authorities.

7. It is also not in dispute that the writ petitioner was a Class-III employee therefore, the writ Court has rightly while relying upon a case of Masih allowed the writ petition filed by the petitioner by setting aside



recovery part only.

8. In view of the above, finding no merit in the present appeal, the same is accordingly, **dismissed**.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

NP