IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 28th OF NOVEMBER, 2024

WRIT PETITION No. 23827 of 2023

HARI SHANKAR SONI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Arun Katare - Advocate for the petitioner.

Shri B.M. Patel- Government Advocate for respondent/State.

ORDER

With consent of both the parties, matter is heard finally.

The present petition has been preferred by petitioner under Article 226 of the Constitution seeking following reliefs:-

(i) That, the present petition filed by the petitioner may kindly be allowed;

(ii) That, the order dated 28.7.2023 Annexure P/1 passed by the respondents may kindly be directed to be quashed.

(iii) That, the respondents may kindly be directed to pay the outstanding amount of Rs.226587/- along with interest at the rate of 10% per annum.

(iv) That, any other just, suitable and proper relief, which this Hon'ble Court deems fit, may also kindly be granted to the petitioner. Costs be also awarded in favour of the petitioner.

Brief facts of the case are that the petitioner was appointed in the year 1979 on the post of Lower Division Clerk. Thereafter the petitioner was promoted in the month of April, 1980 from the post of L.D.C. to the post of Junior Inspector and further in the month of August, 1982 petitioner was promoted from the post of Junior Inspector to Senior Inspector and in the month of November, 1985 petitioner was further promoted from the post of Senior Inspector to Field Officer and petitioner retired from service on 31.12.2020. At the time of retirement there was no departmental enquiry pending against the petitioner and there was no punishment given to the petitioner at the time of retirement. After retirement of petitioner, he requested to the respondents/Department to issue the outstanding post retiral dues to him, but the same was not paid to the petitioner. On preferring the representation, the benefit of retiral dues was given to him but gratuity and leave encashment were not paid and the same was withheld and PPO was not issued in favor of the petitioner and also he was given anticipatory pension that too was fixed incorrectly. On non-payment of gratuity and leave encashment petitioner approached this Court and order dated 01.04.2023 was passed in favor of petitioner. In compliance of the said order, the petitioner was given all the outstanding dues, but some wrong fixation was done by the department with effect from 1.7.2006 to 31.12.2015 and the same has been recovered by the respondent no.3. to the tune of Rs.226587/- from the outstanding dues of the gratuity and leave encashment of the petitioner. The same is illegal and contrary to the principle of natural justice and also contrary to the law laid down by the Hon'ble Apex Court in the case of ***State***

of Punjab and others Vs. Rafiq Masih (White Washer),2015 (1) M.P.H.T. 130 (SC), because the petitioner is Class III employee and no recovery can be made against the Class III employee. Being aggrieved by the same, petitioner has filed this petition.

Per contra, learned counsel for respondents/State opposed the prayer by submitting in their return that after retirement of the petitioner, when the retiral dues were finalized by the Department, then it was revealed that some excess payment was made inadvertently in favor of petitioner from the period between 01.07.2006 to December 2015 to the tune ofRs.2,26,587. Due to want of excess amount earlier paid, the recovery order has been issued. The PPO has already been issued vide order dated 09.09.2023 and the pension has already been settled to the tune of Rs.41,200/- per month to the petitioner. Total amount which was to be paid to the petitioner was Rs.7,19,845/- and out of that the recovery amount to the tune of Rs.2,26,587/- has been recovered from the head of leave encashment and rest of the amount to the tune of Rs.4,93,258/- has been paid to the petitioner. GPF amount to the tune of Rs.16,16,601/- has already been paid to petitioner and GIS amount to the tune of Rs.1,20,665/- is also paid to the petitioner. That apart the gratuity amount to the tune of Rs.15,22,752/- is also paid in favor of petitioner. Petitioner had given an undertaking (indemnity bond) wherein he expressed his consent that if in future it is gathered that any excess payment is released in his favor, then the Department has full authority to recover the same. The recovery has been made in view of the judgement passed in the case of ***State of M.P. & Ors Vs. Jagdish Prasad***

Dubey (W.A. No.815/2017). Hence the petition is devoid of merits and deserves to be dismissed.

Both the parties are heard and perused the entire record with due care.

The Finance Department of Madhya Pradesh issued a circular dated 31.03.2016 in which, it has been held as under :

> *"It is not possible to postulate all situations of hardship which would govern employee 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 hereinabove, we, may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
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> *(i) Recovery from the employees belonging to Class III and class IV service (or Group C and Group D service).*
>
> *(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from the 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."

Law is well settled that no recovery can be made from the employees belonging to Class -III and Class- IV, even more when they have retired or are due to retire within one year of the order of recovery. It is also legally settled that recovery from the employees when the excess payment has been made for the period in excess of five years before the order of recovery is issued is not permissible. It is also well settled that in case excess payment is not made on account of misrepresentation or fraud on the part of the employee, the same could not be recovered and it cannot be recovered without giving any opportunity of hearing also. In the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) reported in 2015 (1) MPHT 130 (SC),*** wherein the Apex Court in Para-12 has postulated certain categories and observed that the recovery from them is impermissible. Para-12 is relevant, which is reproduced thus:

"12. 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 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 employers right to recover."

Thus, from the aforesaid dictum, it can be gathered that recovery from the retired employee or employees who are due to retire is impermissible also when there is no misrepresentation on the part of the person concerned, at the time of claiming benefit in his favor.

In the present case, petitioner is a Class-III employee and the undertaking/indemnity bond which has allegedly been furnished by the petitioner, has been executed at the time of retirement of the petitioner whereas his incorrect pay fixation was made for the period of 2006 to 2015. In the present case it is admitted that petitioner has been retired on 31.12.2020. Thus, it is clear that the undertaking was not furnished by petitioner at the time of extending benefit to him. The undertaking furnished by the petitioner at the time of his retirement cannot be said to be an undertaking for which recovery of excess payment which has been made long back would become effective. The said undertaking does not benefit the respondents and the recovery being made from the petitioner is consequently illegal.

As a consequence, the petition deserves to be and is accordingly allowed. The impugned dated 28.07.2023 (Annexure P/1) directing the recovery be made from the petitioner is hereby set aside.

The amount, if already recovered from the petitioner, be refunded to him along with interest @ 6% from the date of recovery till the date of repayment. Let the same be done within a period of three months from the date of receipt of a certified copy of this order. The pay fixation of the petitioner is however maintained.

The petition is accordingly **allowed and disposed of.**

(ANIL VERMA)
JUDGE

Vishal