

(2024) 12 MP CK 1228

In the Madhya Pradesh High Court, Indore Bench

Case No : Writ Petition No. 28689 of 2022

Gori Saxena

APPELLANT

Vs

The State of Madhya Pradesh Directorate Ayush and Others

RESPONDENT

Date of Decision : 10-12-2024

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (111), 10(2), 36(1), 36(2), 36(3), (4)
Constitution of India 1950 — Article 226

Citation : (2024) 12 MP CK 1228

Hon'ble Judges : Vivek Rusia, J & Gajendra Singh, J

Bench : Single Bench

Advocate : Satish Chandra Bagadiya, Kaustubh Fadnis, Ravindra Singh Chhabra, Raghav Raj Singh, Medha Patkar

Final Decision : Allowed

Judgement

JUDGMENTTAG-JUDGMENT

Subodh Abhyankar, J

This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:

"7.1 It is therefore most respectfully prayed that this petition be allowed with cost: and an appropriate writ, order or directions be issued against the Respondents for quashing Order No. Stha/22/518-21 dated 22nd February, 2022 (Annexure-P/6);

7.2. It is further prayed that; appropriate writ, order, or directions be issued against the Respondents for quashing Order Stha/2022/2319-20 dated 8th August 2022 (Annexure P/10);

7.3. It is further prayed that writ, order, or directions be issued against the Respondents for quashing reply dated 7th September, 2022 (Annexure-P/12);

7.4. It is further prayed that, appropriate writ, order, or directions be issued

against the Respondents for quashing the illegal recovery initiated by the Respondents against the Petitioner;

7.5. That, this Hon'ble Court may further please to grant any other relief, if deems fit in present facts and circumstances"

2] The petitioner is aggrieved by the order dated 22.2.2022, (Annexure P-6) and the order dated 8.8.2022 (Annexure P-10). Vide the order dated 22.2.2022 a recovery to the tune of Rs.2,51,038/- has been made against the petitioner on the ground that she has been wrongly given the increment in pay on account of the circular dated 19.6.2013 (Annexure P-5) which relates to sterilization (Nasbandi), and which according to the respondents has not been properly applied. Subsequently on 8.8.2022 (Annexure P-10), the respondent no.2 has also issued a demand letter of Rs.2,51,038/- on the same ground.

3] In brief facts of the case are that the petitioner is posted as Staff Nurse at District Ujjain, and she was granted advance increment on the basis of the circular dated 25.7.2001 which, with a view to promote the family planning programme, and to encourage the government servant to opt for vasectomy/tubectomy (Nasbandi), provides for a payment of an advance increment. The order in respect of advance increment was passed on 19.6.2013(Annexure P-5), however, after a period of around 13 years, i.e., on 22.2.2022, the impugned notice has been issued to the petitioner, and a recovery to the tune of Rs.2,51,038/- has been made against her without affording any opportunity of hearing. Another demand notice by way of order dated 8/8/2022 has also been issued to her wherein it is mentioned that since the petitioner has already operated herself prior to 24.2.2010, she is not entitled to the benefit of the circular as provided to her on 19.6.2013.

4] Counsel for the petitioner has drawn attention of this Court to circular dated 25.7.2022 (Annexure P-2) which clearly provides that to promote the family planning the Government is providing advance increment to the person who agrees for vesctomy/tubectomy (Nasbandi). It is further submitted that even assuming that the petitioner was granted advance increment on account of wrong interpretation of the aforesaid circular, the amount cannot be recovered after a period of 13 years as there is no suppression of facts by the petitioner.

5] In support of his submission, counsel for the petitioner has also drawn the attention of this Court to the decision rendered by the Supreme Court in the case of Thomas Daniel Vs. State of Kerala and others reported as 2022 SCC online SC 536.

6] Counsel for the respondent/State on the other hand has opposed the prayer, and it is submitted that it was a precondition in the aforesaid circular that such person, who has got himself/herself operated upon should be a public servant at the time operation, and has also relied upon circular dated 14.9.2006 (Annexure R-1).

7] Heard. Having considered the rival submissions, and on perusal of the documents filed on record it is found that so far as the order dated 19.6.2013, on the basis of which the petitioner has been granted the benefit of advance increment is concern the same reads as under:

8] Whereas the circular dated 14.9.2006 (Annexure R-1) on which the respondents have relied upon the same reads as under reads as under:

मध्य प्रदेश शासन

सामान्य प्रशासन विभाग

मंत्रालय, वल्लभ भवन, भोपाल

क्रमांक सी-3/4/2004/3/एक, भोपाल, दिनांक 14.9.2006

9] The demand notice which has been raised by the respondents on 8.8.2022, reads as under.

10] On perusal of the aforesaid circular dated 14.09.2006, and the subsequent demand raised by the respondents, this Court is of the considered opinion that the aforesaid circular has been issued by the State Government only to promote its family planning programme, and in such circumstances, if a person who has already taken steps for the family planning by resorting to Nasbandi prior to his appointment, and is subsequently appointed in the government service, cannot be said not to promote the the government's family planning programme.

11] This court is of the considered opinion that if a public spirited person, regardless of the fact whether he is a government servant or not, unselfishly gets himself/herself operated upon for family planning, such person cannot be deprived of the benefit of the aforesaid circular which provides for advance increments to government servants opting for family planning. This is for the reason that the ultimate object of the government is to control the birth rate and the explosion of population by resorting to family planning only, and if a person has contributed to the same cause while he/she was not in government service and subsequently joins the same, he/she is also entitled to the benefit of his/her benevolent act of helping the government in the retiral clause.

12] Also taking note of the fact that the respondents have effected the recovery against the petitioner on the ground that the advance increment has wrongly been given to her by interpreting the circular in a different manner after a period of 13 years. In such circumstances also, the case of the petitioner would also be covered by the decision rendered by the supreme Court in the case of Thomas Daniel (supra) para 9 of the same reads as under:-

“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular

interpretation of rule/order which is subsequently found to be erroneous, such excess

payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

(emphasis supplied)

13] In view of the facts and circumstances of the case, this Court has no hesitation to come to a conclusion that the impugned orders dated 22.2.2022 and 8.8.2022 cannot be sustained in the eyes of the law, deserve to be and are hereby quashed.

14] Accordingly, the petition stands allowed and disposed of.