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**(2005) 01 MP CK 0022**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 2153 of 2001**

Jagdish Prasad Batham

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision :** 12-01-2005

**Acts Referred:**

**Citation :** (2005) 2 MPLJ 500

**Hon'ble Judges :** Rajendra Menon, J

**Bench :** Single Bench

**Advocate :** Prashant Sharma, for the Appellant; K.N. Gupta with Praveen Niwaskar, for the Respondent

**Final Decision :** Allowed

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## Judgement

Rajendra Menon, J.

Shri Prashant Sharma, Advocate for the petitioner. Shri K.N. Gupta, Senior Advocate with Shri Praveen Niwaskar, Advocate for the respondents.

Petitioner has filed this petition challenging the order, Annexure P/I dated 14-5-2001 passed by the respondent No. 4 recovering a sum of Rs. 41,131/- from the provident fund account of the petitioner. It is the case of the petitioner that he was working in the respondent/Bank as a Class IV employee and after retirement on 31-3-2001, he was entitled to receive a sum of Rs. 2,57,970/- towards the provident fund dues. However, on the ground that the petitioner stood surety and guarantor to a loan advanced to a third party and the said third party is not repaying the loan amount, the aforesaid amount of Rs. 41,131/- was recovered in addition to Rs. 1,42,905/- recoverable towards personal loan obtained by the petitioner.

The grievance of the petitioner is that a sum of Rs. 41,131/- could not be recovered from the provident fund dues of the petitioner. It is the case of the petitioner that without hearing him and without giving him any opportunity to show cause and in an arbitrary manner attaching the aforesaid amount from the

Bank account of the petitioner is unsustainable. It is submitted by him that no amount from the provident fund dues of a employee can be recovered by such attachment.

Learned Counsel appearing for the Bank refuted the aforesaid and it is stated by him that the entire provident fund amount payable to the petitioner amounting to Rs. 2,57,970/- was credited in the account of the petitioner lying with the Bank and after crediting the said amount, the dues adjusted on various heads and while adjusting the same, an amount of Rs. 41,131/- was to be recovered from the petitioner as he stood surety and guarantor on account of nonpayment of the amount by the loanee. The amount deducted cannot be termed to be deducted from his provident fund account as the amount has been deducted after proper notice to the petitioner. It is submitted that no illegality is committed in the matter.

I have heard Learned Counsel for the parties and perused the record.

Even though it cannot be said that the recovery has been effected from the provident fund account of the petitioner but the fact remains that a sum of Rs. 41,131/- lying in credit of the petitioner's account has been used by the Bank without petitioner's consent or approval. Even if the petitioner stood guarantor then the amount can be recovered from the petitioner after following the due process contemplated under law for the purpose of a recovery of certain outstanding amount from the guarantor. Merely because amount is lying in credit with the Bank, Bank does not have any legal authority to use the amount as they wish and can do so only after following the procedure known to law. The amount taken for recovery from the account without consent of the petitioner and without there being decree or order from a competent Court of law is unsustainable.

However, it is reported that from the sum of Rs. 41,131/- an amount of Rs. 19,738/- has been recovered from the defaulter, adjustment has been made and paid to the petitioner. It is further reported that only a sum of Rs. 21,393/- is to be paid to the petitioner.

Accordingly, the respondent/Bank is directed to credit a sum of Rs. 21,393/- in the account of the petitioner and are free to make any recovery of the amount due from the petitioner only after following the process known to law for the purpose of recovery of amount from a defaulter of guarantor.

Petition stands allowed and disposed of with the aforesaid without any order as to cost.

Certified copy as per rules.