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**(2015) 04 MP CK 0150**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 4741 of 2007**

Laxmi Narayan Dhakad

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision : 17-04-2015**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2015) 3 MPLJ 102**

**Hon'ble Judges : Sujoy Paul, J**

**Bench : Single Bench**

**Advocate : Anil Kumar Shrivastava, for the Appellant; Nidhi Patankar, Advocates for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Sujoy Paul, J—The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution, with a prayer to set aside the part of PPO, whereby recovery of Rs. 20,577/- has been made from the petitioner. It is prayed that the said amount be refunded with interest. The respondents have not filed any return in this case and, therefore, after affording sufficient opportunity, the right to file reply was closed.

2. The petitioner was appointed on the post of Patwari and retired from the said post on 31-3-2006. Before retirement, no disciplinary proceedings or criminal case was instituted against him. The respondents without providing any opportunity recovered an amount of Rs. 20577/-, which is arbitrary and contrary to principles of natural justice. Shri Shrivastava relied on a recent Supreme Court judgment, reported in State of Punjab Vs. Rafiq Masih, (2014) 10 SCJ 700 etc. in this regard.

3. Prayer is opposed by Smt. Patankar, learned Government Advocate. She submits that some overpayment must have been made, which is sought to be recovered through PPO and, therefore, no interference be made.

4. There is no material on record to show that the petitioner was given any opportunity of hearing before making said recovery. The reason for making recovery is also not clear. This is settled that retiral dues are not bounty. It can be recovered only as per the procedure established under the law. The Apex Court in Rafiq Masih (supra), opined that recovery cannot be made in certain circumstances including recovery from employees belonging to Class III and Class IV service (or Group "C" and Group "D" service) and Recovery from retired employees, or employees who are due to retire within one year of the order of recovery.

5. The present case is squarely covered by the judgment of Supreme Court. Accordingly, the action of respondents in making said recovery is declared as illegal and set aside. The respondents are directed to refund the said amount to the petitioner within three months from the date of production of copy of the order. Petition is allowed.