

(2018) 07 MP CK 0233
In the Madhya Pradesh High Court
Case No : Writ Petition No.13278 OF 2015

Maya Dhurve

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 25-07-2018

Acts Referred:

Citation : (2018) 07 MP CK 0233

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : G.K. Patel, Puneet Shrotri

Final Decision : Allowed

Judgement

The petitioner, by the instant petition is challenging the order dated 17.07.2015 (Annexure P-2) to the extent of recovery made therein. Annexure P-2

is a Pension Payment Order issued in favour of the petitioner after her retirement which made effective w.e.f. 31.03.2015. The petitioner has

contended that the order impugned is wholly arbitrary and illegal because the recovery has been initiated without giving her any notice and without

making any enquiry. Although, it has been informed to the petitioner that she had not acquired Hindi Typing pass certificate and she was not entitled to

get the regular pay scale and as such, the amount has been calculated and was proposed to be recovered from her retiral dues.Â She further submits

that her appointment has been made in regular establishment under the Scheme of Regularization of Daily Wager Employees issued by the State

Government in which, various relaxations have been provided to the employees working as Daily Wager and, therefore, no such condition for

acquiring certificate of Hindi Typing pass was even made in her appointment

order. It is further contended by the petitioner that till the date of retirement, no objection has been raised by any of the Authority but after her retirement, amount shown in the Pension Payment Order has been directed to be recovered and was recovered by the Authority. She relies upon a judgment reported in 2015 (1) MPHT 130 [State of Punjab Vs. Rafiq Masih] saying that as per the criteria laid down by the Honâ??ble Apex Court, recovery cannot be effected from the petitioner because she is a Class-III employee and retired from service.

Per-contra Shri Shroti appeared on behalf of the respondents stated that in view of minimum requisite qualification for the post of Lower Division Clerk-cum-Typist, the petitioner must have the certificate of Hindi Typing pass and in absence of the same, she is not entitled to get the annual increment but ignoring such a requirement, the petitioner has been paid the amount under misconception. The matter is of the year 2015 and as per the respondents, the reply had been prepared, copy of the same was served on the petitioner in the year 2015 but could not be filed, though is available with the file of the Panel Lawyer. Since the said reply has been served upon the petitioner in the year 2015 and the copy of the reply available with the respondents is taken into consideration for proper adjudication of the case. Learned Panel Lawyer also submits that the cases relating to recovery of retired employees are pending for final adjudication before the Larger Bench, therefore, this matter may also be also kept pending till the decision of the Larger Bench.

However, considering the facts involved in the present case, it has no relation with the matters referred to the Larger Bench because in such cases, the Larger Bench has to consider whether the undertaking is taken by the Department at the time of pay revision can be considered to be a valid undertaking or it is an undertaking made by the employee under compulsion, therefore, it is illegal. But in the present case, there is no such stand taken by the respondents that recovery from the petitioner can be made as she had submitted the undertaking, therefore, keeping this matter pending till the decision of the Larger Bench is of no significance.

Considering the contention raised by the counsel for the petitioner that the petitioner is a Class-III employee retired from service and at the time of retirement, recovery has been proposed in the Pension Payment Order but the

same cannot be done in view of the criteria laid down by Honâ??ble

the Apex Court in the case of Rafiq Masih (supra). Taking note of the law laid down by Honâ??ble the Apex Court and the criteria laid down

therein, there is a substance in the contention raised by the counsel for the petitioner that recovery cannot be made from the petitioner. For the

purpose of convenience, the criteria laid down by Honâ??ble the Apex Court is being reproduced hereinbelow:-

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 '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.

In view of the above, it is clear that the case of the petitioner falls within the aforesaid category of the employees who have been protected by

Honâ??ble the Apex Court from making any recovery from excess payment made to them. Thus, the recovery as shown amounting to Rs.3,04,640/-

in the impugned order dated 17.07.2015 (Annexure P-2) is hereby set aside and the respondents are directed that if the said amount has been

recovered from the petitioner then the same be refunded to her within a period of two months from the date of submitting certified copy of this order

and if the recovery has not been made then the same shall not be made from the

petitioner and she be paid all retiral dues as per her entitlement.

The petition is accordingly allowed.

Certified copy as per rules.