
(2016) 03 MP CK 0056
In the Madhya Pradesh High Court
Case No : WP No. 6755 of 2015

Nathulal Malviya

APPELLANT

Vs

School Education Department

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Citation : (2016) 1 MPWN 355

Hon'ble Judges : Prakash Shrivastava, J.

Bench : Single Bench

Advocate : Ranjit Sen, Advocate, for the Appellant; Aniket Naik, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Prakash Shrivastava, J.—Heard finally with consent.

This writ petition has been filed by the petitioner challenging the recovery of a sum of Rs. 1,73,461/- which has been directed vide Annexure P/1 and P/2.

2. In brief, the case of the petitioner is that the petitioner was initially appointed as Sub Teacher on 10/9/1980 and was subsequently regularised as Assistant Teacher and was given the pay scale of Rs.545-975 and 975-1650 and thereafter he was given the senior pay scale but on the basis of some audit objection the recovery of Rs. 1,73,461/- has been directed.

3. A reply has been filed by the respondents stating therein that since the increments were wrongly given to the petitioner, therefore, recovery has been directed.

4. Learned counsel for petitioner submits that the petitioner is presently working on the post of Assistant Teacher and is at the fag end of his service, when the retirement is due, the impugned recovery has been directed which will cause serious hardship to the petitioner. He has placed reliance upon the judgment of the Supreme Court in the matter of Shyam Babu Verma v. Union of India and

others reported in 1994(2) SCC 521, in the matter of Sahibram v. State of Haryana and others reported in 1994(2) SCC 52, in the matter of Syade Abdul Qadir and others v. State of Bihar and others reported in 2009(3) SCC 475.

5. Counsel for the respondents submits that since the benefit was wrongly extended, therefore, it has been withdrawn. He has placed reliance upon the judgment of the Supreme Court in the matter of Chandi Prasad Uniyal and others v. State of Uttarakhand and others reported in 2012(8) SCC 417.

6. Having heard the learned counsel for parties and on the perusal of the record, it is found that no opportunity of hearing was given to the petitioner before passing the impugned order. It has further been found that though the plea of no misrepresentation or fraud on the part of the petitioner is not sustainable in view of the judgment of the Supreme Court in the matter of Chandi Prasad Uniyal (supra), but it is a case of great hardship since the recovery is sought to be made at the fag end of his service. The division bench of this court by the judgment dated 9th November, 2012 in WA No. 168/2012 (State of MP and others v. Omprakash S/o Daulat Singh Pure) has considered the judgment of the Supreme Court in the matter of Chandi Prasad Uniyal (supra) as well as the issue of hardship and has held as under:-

"7. We have gone through the order passed by the Supreme Court in the case of Chandi Prasad Uniyal and others v. State of Uttarakhand and others (supra). We find that the Supreme Court in the said judgment has observed the directions contained in the case of Syed Abdul Qadir (2009) 3 SCC 475 and Col. B.J. Akkara (2006) 11 SCC 709 as also in the case of Shyam Babu Verma 1994(2) SCC 521 and Sahib Ram vs. State of Haryana, 1994 (2) SCC 52 wherein the department is restrained from recovery of excess amount keeping in view the peculiar facts and circumstances of the case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.

8. In the present case also, the benefit extended to the writ petitioner was sought to be recovered on his retirement. In our considered view, this if allowed to stand, would cause great hardship to a retired employee.

9. In the circumstances, we are of the view that no case for interference in the order passed by learned Single Judge is made out.

10. As a result, the appeal fails and is hereby dismissed".

7. The Supreme Court in the matter of State of Punjab and others, etc v. Rafiq Masih (White Washer) etc reported in 2015(1) MPHT 130(SC) has summarised the situation wherein the recovery by the employers would be impermissible in law by holding as under:-

"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".

8. It is pointed out that the petitioner is a group C employee covered by Clause (I) of the para 12 above and he is also covered by Clause (iii) of para 12 above.

9. In the aforesaid circumstances, the impugned recovery at the instance of the respondents cannot be sustained and is hereby set aside. The respondents are directed to refund the amount to the petitioner within a period of three months from today.