

(2014) 09 MP CK 0158
In the Madhya Pradesh High Court
Case No : Writ Petition No. 471/2014

Sayed Tofique Hussain

APPELLANT

Vs

Secretary State of M.P. Veterinary Department

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Citation : (2014) 09 MP CK 0158

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : S. Upadhyay, Learned Counsel, Advocate for the Appellant; N. Abhyankar, Learned Counsel, Advocate for the Respondent

Judgement

Prakash Shrivastava, J.—Heard finally with consent.

2. This writ petition has been filed by the petitioner challenging the order of recovery dated 11/12/2013 which has been affected while settling the retiral dues of petitioner.

3. The case of petitioner is that he was working on the post of Upper Division Clerk and had retired w.e.f. 31/5/2013 and at the time of his retirement, the respondents have affected recovery by the impugned order.

4. A reply has been filed by the State taking the stand that since during service period, petitioner was wrongly granted higher pay scale, therefore, while settling the pension, excess payment which was made to the petitioner has been directed to be recovered.

5. Learned counsel appearing for the petitioner submits that the impugned recovery has been directed against the petitioner without any opportunity of hearing and that the benefit was extended to the petitioner not on account of any misrepresentation or fraud. He has further submitted that the impugned recovery after his retirement, will cause serious hardship to the petitioner. He has placed reliance upon the 2 judgment of the Supreme Court in the matter of

Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , in the matter of Sahibram Vs. State of Haryana and others reported in 1994(2) SCC 52, in the matter of Syed Abdul Qadir and Others Vs. State of Bihar and Others, .

6. Counsel for the respondents submits that since the benefit was wrongly extended, therefore, it has been withdrawn.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 Vs. State of Uttarakhand and Others, .

7. 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 after the retirement of the petitioner. The division bench of this court by the judgment dated 9th November 2012 in W.A. No.168/2012 (State of M.P. and others Vs. Om Prakash S/o Daulat Singh Pure) has considered the judgment of the Supreme Court in the 3 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 Vs. 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 and Others Vs. State of Bihar and Others, and Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, as also in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, and Sahib Ram 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 4 and is hereby dismissed".

8. The present case is also a case similar to the one which has been decided by Division Bench of this Court as above. This is also a case of great hardship when the amount is sought to be recovered at the fag end of service after the retirement of the petitioner.

9. In view of this, the writ petition is allowed and the impugned order dated 11/12/2013 relating to recovery is hereby set aside. The respondents are directed to refund the amount, if any, recovered in pursuance to the impugned

order within a period of three months from the date of receipt of certified copy of this order.

10. C.C. as per rules.