
(2020) 10 MP CK 0199

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 38462 Of 2020

Shivendra Pratap Singh @ Vaibhav

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 20-10-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 473(3), 439
Indian Penal Code, 1860 — Section 376(2)(n), 506

Citation : (2020) 10 MP CK 0199

Hon'ble Judges : J. P. Gupta, J

Bench : Single Bench

Advocate : Manish Dat, Virendra Singh Choudhar, Vinod Mishra, Paritosh Gupta

Final Decision : Allowed

Judgement

Prakash Shrivastava, J

Learned counsel for petitioner submits that petitioner is confining the present writ petition only to the recovery of interest part, therefore, the pendency of the matter before the Full Bench will not come in the way.

Having heard the learned counsel for parties and on perusal of the record, it is noticed that the petitioner who was working as Assistant Teacher has filed the present writ petition challenging the orders dated 3/3/2017 Annexure P-4 and 24/3/2017 Annexure P-5 by which the benefit of higher pay scale which was earlier extended to petitioner after completion of 12 years of service has been withdrawn and the pay has been refixed by directing recovery alongwith interest on the amount which was paid in excess.

It is not the case of respondents that on account of any fraud or misrepresentation on the part of petitioner the amount was paid in excess.

The similar controversy has been considered by the Division Bench by order dated 6/8/2018 in case of State of MP Vs. Rajendra Bhawsar passed in WA No.

120/2018 wherein though the respondents have been permitted to recover the excess payment but they have been restrained from recovering the interest amount. The Division Bench by affirming the order of learned Single Judge restraining recovery of the interest amount has held that:

"This intra court appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyalayaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 has been filed by the appellant / State of Madhya Pradesh being partly aggrieved by order dated 13.09.2017 (Annexure A/3) passed in Writ Petition No.826/2017, by which the learned Writ Court set aside order dated 23.01.2017 (Annexure P/2), directing recovery of interest amount recovered from the employee.

2.It is not in dispute that the respondent / writ petitioner was not at fault, and therefore, we are of the view that the learned Writ Court rightly came to the conclusion that the employee is not liable to pay interest on the recovery amount, which has already been recovered from the writ petitioner.

3.Considering the aforesaid, no case is made out to interfere with impugned order.

4.Accordingly, Writ Appeal No.120/2018 has no merit and is dismissed."

Since the present case stands on the same footing, therefore, on the same terms the present writ petition is also disposed off permitting the respondents to recover the principal amount of excess payment but restraining the respondents from recovering the interest on the said excess payment. The competent authority is directed to make the calculation in terms of Annexures P-4 & P-5 in respect of the principal amount and recover the same in accordance with law within a period of two months from the date of receipt of certified copy of this order.

C.C. As per rules.