
(2018) 01 MP CK 0114
In the Madhya Pradesh High Court
Case No : 4778 of 2017

Smt. Sumitra Rawat

APPELLANT

Vs

The State of M.P. & others.

RESPONDENT

Date of Decision : 22-01-2018

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2018) 01 MP CK 0114

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : Ravi M.K. Vyas, Rajesh Tiwari

Final Decision : Allowed

Judgement

1. This petition filed under Article 226 of the Constitution of India challenges the order dated 02.02.2017 (Annexure-P/3) whereby the

respondents have decided to recover the amount of Rs.15,90,919/- from the petitioner on the ground of alleged overpayments between May,

1985 to July, 2011 and between July, 2011 to January, 2017. The original payment with interest is sought to be recovered from petitioner's

salary.

2. Admittedly, petitioner retired on attaining the age of superannuation on 31.10.2017. Mr. Vyas, learned counsel for the petitioner submits that

recovery is impermissible because (i) adverse order of recovery is passed without affording opportunity and without following principles of natural

justice; (ii) there was no misrepresentation of fact by the petitioner, hence, recovery is impermissible; (iii) the recovery is arising out of a finding that

overpayments were made whereas such payments were arising out of grant of

time scale of pay by issuance of proper orders by the competent authority. Those orders were never nullified, cancelled or modified and hence Pension Payment Authorities have no authority, jurisdiction and competence to nullify those orders. It is further submitted that petitioner is a Class-III employee and therefore in the light of judgment of Supreme Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) etc. reported in 2015 (1) MPHT 130 (SC) recovery from present petitioner is impermissible.

3. Per-contra, Mr. Tiwari, learned G.A. supported the impugned order on the strength of Annexure-R/1 & R/2. He submits that petitioner had given undertaking (Annexure-R/3) cumulatively filed and hence as per the judgment of Supreme Court passed in Civil Appeal No.3500/2006 [High Court of P&H vs. Jagdev Singh] recovery is permissible.

4. No other point is pressed by the parties.

5. I have heard the parties at length and perused the record.

6. It is evident from recovery order (Annexure-P/3) that the respondents intended to make recovery by alleging overpayment of senior scale, whereas in Annexure-R/1 a note is appended that from 06.05.1985 amended pay scale was given and in that event recovery may be made.

Another mention is about grant of third time scale of pay in the said order.

7. In the opinion of this Court, the argument advanced by Mr. Vyas, learned counsel for the petitioner has substantial force. Before passing the impugned order which admittedly entails civil consequences, the principles of natural justice were not followed. The recovery is directed to be made from a Class-III employee without showing any misrepresentation of fact on her part. The counsel for the respondents/State is unable to show any enabling provision which empowers the Pension Payment Authorities to nullify the benefits of third time scale of pay and direct recovery. Moreso, when such grant of time scale of pay was never set aside by the competent authority prior to issuance of Annexure- R/1. This is a matter of common knowledge for the persons who are aware of the procedure for grant of time scale of pay that such benefits are granted after due screening of employee and after passing of order by the competent authority. Accordingly, for these cumulatively reasons I deem it proper to allow

this petition. So far reliance on undertaking is concerned, the undertakings (Annexure-R/3) are related to grant of revised pay as per M.P. Pay

Revision Rules, 1983, 1988 & 2009. As noticed, recovery from petitioner is not arising out of revision of pay and therefore said undertakings are

of no assistance to the respondents. Consequently, the judgment of Jagdev Singh (Supra) cannot be pressed into service. For these cumulative

reasons, petition deserves to be allowed.

8. Apart from this, the Supreme Court in the case of Rafiq Masih (supra) opined that in following class of cases 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.

9. In the light of aforesaid, the petitioner's case is squarely covered by the judgment passed in Rafiq Masih (Supra). Resultantly, impugned order

dated 02.02.2017 (Annexure-P/3) is set aside. Petition is allowed. No cost.