IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 4th OF AUGUST, 2026

WRIT PETITION No. 25179 of 2024

SUSHIL KUMAR PANDEY

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Vijay Shukla - Advocate for petitioner.

Ms. Aishwarya Singh - Govt. Advocate for respondent-State.

Ms. Surbhi Nigam - Advocate for respondent no.5.

ORDER

Petitioner has filed this writ petition under Article 226 of the Constitution of India challenging the orders dated 02.08.2024 and 21.08.2024, filed as Annexure P/1 and P/2 respectively, passed by respondent No.5 and respondent No.6.

2. Counsel appearing for the petitioner submitted that the petitioner was appointed in the establishment of the respondents on 21.12.1983. After rendering sincere and unblemished service for about 40 years, he retired from service on 30.06.2024 on attaining the age of superannuation. It is submitted that after retirement, respondent Nos.5 and 6 issued the impugned orders directing recovery of Rs.4,38,911/- on the ground of a negative balance in the petitioner's General Provident Fund (GPF) account. Respondent No.6, vide communication dated 21.08.2024 (Annexure P/2),

further directed the petitioner to deposit the aforesaid amount within three days. It is submitted that the impugned orders are arbitrary, illegal and contrary to law. Learned counsel further submitted that recovery from the petitioner's retiral benefits is impermissible in view of the judgment of the Supreme Court in **State of Punjab and others vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334**, wherein the Apex Court has, in paragraph 12, laid down the categories of cases where recovery is impermissible. It is submitted that the petitioner's case squarely falls within the parameters laid down therein. Prayer is made that the impugned orders dated 02.08.2024 and 21.08.2024 may be quashed.

3. Counsel appearing for respondent No.5 opposed the petition and submitted that the petitioner superannuated from service on 30.06.2024 and the final payment of his GPF was processed on 10.07.2024 pursuant to the departmental letter dated 02.07.2024. It is submitted that while forwarding the final payment, the department was also requested to take action in accordance with the Rules in case no objection regarding discrepancies in the calculation of the final payment was received from the petitioner within the stipulated period. It is further submitted that during scrutiny of the petitioner's GPF account, it was found that two withdrawals in the sum of Rs.7,000/- made in January, 1992 and so also in December, 1994 respectively had been reflected in the GPF passbook maintained by the petitioner's department and, therefore, the same were taken into consideration while finalizing the petitioner's GPF account. The petitioner as well as the department were informed about the said discrepancies through

the notice issued by the office of the Accountant General. It is further submitted that the final payment of GPF was made strictly in accordance with Rule 32(3)(iii) of the M.P. General Provident Fund Rules, 1955 after verifying the departmental records with the ledger maintained by the office of the Accountant General. After processing the account and awarding admissible interest, the petitioner's GPF account reflected a negative balance of Rs.4,38,911/-. It is further submitted that that the judgment of the Supreme Court in State of Punjab vs. Rafiq Masih (supra) is not applicable to the facts of the present case, as the present matter relates to recovery of a negative balance in the GPF account, which is recoverable under Rule 14(7) of the M.P. General Provident Fund Rules, 1955, and not to recovery of excess payment made by the employer to an employee. It is, therefore, submitted that no interference is called for and the writ petition deserves to be dismissed.

4. Heard learned counsel for parties.

5. Judgment passed by Supreme Court in case of ***Rafiq Masih (supra)*** is arising out of excess payment being made to employees due to error committed by competent authority in determining emoluments. Case of Rafiq Masih is only applicable in cases of recovery, which is to be made under Madhya Pradesh Civil Services (Pension) Rules, 1976 in accordance with Rule 65. Said judgment will have no application in case of recovery which is to be made under M.P. General Provident Fund Rules,1955.

6. Recovery in respect of general provident fund shall be governed by M.P. General Provident Fund Rules, 1955. As per Rule 14(7) of M.P.

General Provident Fund Rules if subscriber is found to have drawn from fund an amount excess of the amount standing to his credit, then said amount of advance or withdrawal is to be repaid by him with interest in lump sum and in case of default same to be recovered by deduction in lump sum from the emoluments of subscriber. Rule 65 of Pension Rules lays down the process of recovery and Government dues are defined in Explanation-1 to Rule 65. In Explanation-1 to Rule 65, Government dues are to be adjusted by taking equivalent cash deposit from the employee or out of gratuity payable to him or to his nominee or legal heir.

7. On going through aforesaid provisions of law, it is found that excess payment which has been made to an employee regarding house building, conveyance advance, rent, pay/allowances, and income tax can be deducted under Rule 65 of Pension Rules, 1976. If there is negative balance then same is to be recovered under Rule 14(7) of M.P. General Provident Fund Rules, 1955. Rule 14(7) lays down that in cases of default of repayment of withdrawal from provident fund, same can be recovered lump sum from emoluments of subscriber. Emolument means a payment that is made specially in money or any other form for service of an employee. Emolument will include pension as same is paid for services of an employee. Therefore, Rule 14(7) of General Provident Fund Rules, 1955 can be used for recovery. Recovery in respect of over payment of pay and allowances stands on a different footing from recovery which is to be made for negative balance in GPF account. In case of over payment of pay and allowances, there is no misrepresentation by a party and due to mistake of an employer, excess

amount is paid to an employee. Employee is not aware of said mistake on part of employer and consumes said excess payment in his account. Small excess payments are made each month which over period of time becomes a towering amount which causes hardship to an employee. Employee is not aware of said excess payment nor there is any misrepresentation on his part. In said cases, Apex Court has repeatedly stated that at the time of retirement, lump sum recovery cannot be made from retired employee. However, in case, where an employee has made withdrawal from GPF account, he is aware of such a withdrawal. Withdrawal is permitted on his request and it is duty of an employee to return the said sum with interest in GPF account. If party defaults, then recovery can be made.

8. In view of same, it is clear that principles laid down in case of Rafiq Masih (supra), shall be not applicable in cases of recovery for negative balance in GPF account. No case is made out for interference. Recovery from an employee can be made if there is negative balance in the GPF account of petitioner.

9. Writ petition filed by petitioner **is dismissed**.

(VISHAL DHAGAT)
JUDGE

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