(2013) 10 MP CK 0112

In the Madhya Pradesh High Court

Case No : Writ Petition No. 22180 of 2012

Taapeshwar Nath Mishra APPELLANT

Vs

The State of Madhya Pradesh RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0112

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Rahul Mishra, for the Appellant; Rahul Jain, D.A.G., for the Respondent

Final Decision : Partly Allowed

Judgement

Rajendra Menon, J.—Petitioner, a retired Headmaster has filed this writ petition and calls in question the action of the respondents in proposing to recover a sum of Rs. 1,31,676/- by way of interest from the gratuity and post retiral benefits of the petitioner. The petitioner was working as a Headmaster in the Govt. Middle School, Mankahari, Block Raipur Karchuliyan, District Rewa and has retired on attaining the age of superannuation. However, after retirement when the post retiral benefits of the petitioner was being calculated, it was found that right from June 1996 at the time of pay fixation of the petitioner, certain mistake has been committed and an amount in excess of the entitlement was paid to the petitioner. Accordingly, a detailed calculation was undertaken and it was found that between June 2006 upto the year 2011 till the retirement of the petitioner, a sum of Rs. 56,127/- has been paid in excess to the petitioner. It was found that the amount in excess of the entitlement was paid to the petitioner due to certain mistake committed in his pay fixation. Accordingly, the competent authority has directed to recovery of Rs. 56,127/- and this amount has already been recovered from the salary of the petitioner.

2. It is a common ground that this amount of Rs. 56,127/- has been deducted from the salary due and payable to the petitioner. However, now a sum of Rs.

1,31,676/- is being recovered from the petitioner being interest at the rate of 12% per annum and the said recovery of the interest is ordered in the light of circular issued by the State Government vide Annexure P-9 dated 31-05-2011. In this circular issued by the State Government in the name of Governor of Madhya Pradesh, a provision has been contemplated for recovery of interest in the case of payment of dues recoverable from the employees. Shri Rahul Mishra, learned counsel for the petitioner invites my attention to the circular Annexure P-9 dated 31-05-2011 and points out that this circular is only having prospective effect. The interest to be recovered as per this circular can be done only in the case of recovery to be effected after 31-05-2011. As far as the case of the petitioner is concerned, it is said that the excess amount was paid to the petitioner right from 1996 upto the year 2011 and the entire amount has been recovered from the salary of the petitioner. It is said that the excess payment was paid in the year 1996 and by applying the circular retrospectively for the excess payment made in the year 1996, interest cannot be imposed. It is argued by Shri Rahul Mishra, learned counsel for the petitioner that the circular can only be effected in the case of excess payment made after circular came into force and no excess payment made prior to coming into force the circular can be subjected to payment of interest in accordance with circular. It is said that when the excess amount was paid in the year 1996, there was no provision for recovery of the amount with interest, this circular came into force in the year 2011 and therefore for any excess payment made prior to came into force the circular Annexure P-9 dated 31-05-2011, no recovery of interest can be made. Accordingly, Shri Rahul Mishra submits that Circular Annexure R-1 will not have retrospective effect because no excess amount was paid to the petitioner prior to coming into force the said circular, accordingly Shri Rahul Jain prays for interference into the matter.

3. Shri Rahul Jain, learned Deputy Advocate General for the State refuted the aforesaid and argued that as indicated, the amount has been recovered from the salary of the petitioner and now interest is being recovered in the light of circular which came into force w.e.f. 31-05-11, and therefore for the recoverable interest it is said that the State Government has not committed any error.

4. I have heard the learned counsel for the parties at length and perused the record. From the statement of payment made and the recovery ordered as is evident from Annexures P-3, P-4 and P-6, it is clear that the excess payments were made to the petitioner right from the year 1996 upto the year 2009 and the amount paid to the petitioner was also recovered from his salary, now the question is as to whether the excess payment made can be subjected to recovery alongwith interest. Admittedly the payment of excess amount was made to the petitioner for the year 1996 onwards and the recovery of interest is ordered on the basis of circular which came into force prior to 31-05-2011.

5. That being so, I am of the considered view that excess amount paid to the petitioner prior to 31-05-11 can not be recovered alongwith the interest,

recovery of interest can be made only from the date when such amount was improperly or incorrectly paid to the petitioner after 31-05-2011. Interest on the amount already paid to the petitioner prior to 31-05-2011 can not be subjected to interest based on the circular dated 31-05-2011, as the scheme for recovery of interest does not have any retrospective effect, therefore, the excess amount paid to the petitioner right from the year 1996 upto the circular came into force I.e. 31-05-2011 cannot be subjected to any amount of interest as per this circular. Accordingly, recovery of interest from the petitioner on the excess amount paid right from the year 1996 is not permissible the respondents can only recover interest on such amount which has been paid in excess of the entitlement of the petitioner after 31-05-2011 and not prior to that.

6. Accordingly, this petition is allowed in part. The respondents are directed not to recover any interest from the excess amount paid to the petitioner upto 31-05-2011 and interest can be recovered on amount which was paid to the petitioner only after 31-05-2011, only this amount can be subjected to interest as per circular Annexure P-9 and if any interest has been recovered from the pensionary on the amount received prior to 31-05-2011, the same be refunded back to the petitioner within a period of two months.

7. With the aforesaid, this petition stands allowed and disposed of. C.C. as per rules.