



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
WRIT PETITION No. 28408/2022
SMT. PARWATI VERMA
Versus
THE STATE OF MADHYA PRADESH & OTHERS**

Appearance :

Shri Shailesh Tiwari – Advocate for the petitioner.

Shri Praveen Namdev – Government Advocate for the respondent/State.

Reserved on :- 02.09.2024

Pronounced on:- 22.10.2024

ORDER

Heard finally with the consent of both the parties

This petition under Article 226 of the Constitution of India has been filed by the petitioner being aggrieved by impugned recovery order dated 25.01.2022 (Annexure P-4) passed by Commandant, 8th Battalion, SAF, Chhindwada M.P.; whereby an amount of Rs.29,66,982/- has been directed to be recovered from the petitioner as payment of excess salary Rs.13,01,635/- alongwith interest of Rs.16,65,347/- thereon.

2. Brief facts of the case are that the petitioner was initially appointed on 19.05.1981 with the State of M.P. Home Department and on attaining



the age of superannuation got retired from the post of Subedar (M) w.e.f. 31.05.2016. According to the petitioner, in view of the fact that nature of duties viz. responsibilities and assignments of Executive and Ministerial Staff on the post of Inspector, Subedar, Sub-Inspector etc. are same, respondent No.2 issued letter dated 25.10.2019 (Annexure P-2) for extending similar pay scale to both the cadres which was granted to the petitioner also. However, when the petitioner got superannuated, vide the impugned order, an order of recovery of excess salary and interest thereon has been issued by respondent No.3. Being aggrieved, the petitioner has filed this petition.

3. It is submitted by the counsel for the petitioner that after retirement, the services of the petitioner are governed by M.P. Civil Services (Pension Rules), 1976 wherein Rule 9(4) provides for that no coercive action of recovery whatsoever can be initiated after four years of retirement which has been done by the impugned order. Moreso, it is contended that in view of Rule 9(4) of the Rules, Governor is only empowered to may recoveries from a retired employee, that too within a period of four years from the date of retirement. Thus, it is contended that the respondents have no jurisdiction to initiate any recovery from the petitioner. It is also submitted that petitioner's pay scale has been revised without any notice or opportunity of hearing to the petitioner. It is further submitted that on the



one hand respondents/authority itself has extended similar pay scale to Executive and Ministerial Staff keeping in view their nature of duties and on the other hand has directed recovery treating it to be excess salary from the Ministerial Staff which is discriminatory. Moreso, when there is no misrepresentation on the part of the petitioner. Further it is contended that identical issue came up before before this Court in **W.P.No.15173/2006** which was decided on 19.12.2008 holding that wrong fixation of pay scale, if any, done by the employer, no recovery can be done from the salary/retiral benefits if there is no misrepresentation of the employee. Thus, it is contended that petition may be allowed and the petitioner be granted following reliefs :

- “1. to quash impugned order dated 25.01.2022 Annexure P-4 issued by respondent No.3.
2. to direct respondents to pay proper monthly pension to the petitioner in accordance to the pay scale drawn by her at the time of retirement i.e. 31.05.2016 including arrears thereupon with interest @ 18% per annum.
3. to direct the respondents to finalize the payment of gratuity in full in favour of the petitioner by awarding interest @ 18% per annum within a stipulated period of time.
4. to issue any other writ or direction looking to the facts and circumstances of the case and also award cost of litigation in favour of the petitioner.”



4. To bolster his submissions, learned counsel for the petitioner has relied upon order of Full Bench of this Court in the case of the **State of Madhya Pradesh & ors. vs. Jagdish Prasad Dubey & ors. (Writ Appeal No.815/2017 decided on 06.03.2024)**. It is also contended that the Director General of Police have no jurisdiction to initiate any coercive action.

5. Per contra, learned Government Advocate opposed the submissions made by learned counsel for the petitioner by contending that the petitioner was initially appointed on 19/05/1981 under the Ministerial Cadre in Home department and on attaining the age of superannuation, the petitioner has been retired from the post of Subedar (M). Thereafter, respondents have duly prepared Pension Paper Order of the petitioner and forwarded the same towards Joint Director, Treasury and Accounts for verification. In turn, the Joint Director, Treasury and Accounts verified the scales of the petitioner w.e.f. 01/01/1986 and found that excess payment of Rs.29,66,982/- including interest has been paid to the petitioner due to wrongly fixation of pay scale of Rs.4,000/- to Rs.6,000/- instead of pay scale of Rs.3050/- to Rs.4590/-. It is also contended that in financial cases where the ambiguity is prima-facie proved, there is no requirement to serve the show cause notice at all. It is further contended that in similar situation, other employees have challenged the order of recovery relating to the



Ministerial staff by way of filing writ petitions and by order dated 18/07/2007, the writ petitions were dismissed and the order dated 25/03/2006 passed by the State Government was upheld. Being aggrieved various writ appeals were filed, which were disposed of by order dated 21/04/2011 passed in the case of **Smt. Sushma Tiwari vs State of M.P. (Writ Appeal Nos. 1760/2007 and other connected Writ Appeals)**. The writ appellate Court while deciding **W.A. No. 1760/2007** upheld the decision of the State Government to effect recovery, which was subsequently affirmed by the Hon'ble Supreme Court in the case of **S.H. Baig** in **Civil Appeal Nos. 9888- 9899/2018**. On placing the reliance on the decision of Hon'ble Apex Court in the case of **Chandi Prasad Unyal Vs. State of Uttarakhand, 2012 (8) SCC 417**, it is contended that excess payment made to the employee, due to irregular/wrongly pay fixation or grant of benefits can be recovered. Hon'ble Apex Court in the case of **High Court of Punjab and Haryana vs. Jagdev Singh (Civil Appeal No. 3500/2006)** has held that in cases where an undertaking is specifically furnished by the Office at the time his pay was revised accepting that any payment found to have been made in excess would be liable to be adjusted, the recovery can be made as the employee was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment. In the present case, the petitioner has even given



undertaking at the time of pay-fixation as well as at the time of retirement, wherein it has been clearly sworn by the petitioner that she is ready to adjust the amount, if need arises. State of M.P., Finance Department has also issued certain guidelines with respect to recovery, vide its order dated 12/06/2020, wherein it has been clearly enumerated that excess amount, which has been paid inadvertently, same shall be subject to recovery. As per Rule 65 of the M.P. Civil Services Pension Rules, 1976, it is the duty of every retiring government servant to clear all government dues before the date of his/her retirement. However, in the case of **State of Punjab Vs. Rqfiq Masih, 2015 AIR SCW 401**, the statutory rules prevailing in the State Government was not considered. Under these circumstances, no interference is warranted in the impugned order by this court. Hence, he prays for dismissal of the writ petition.

6. I have heard rival contentions of learned counsel for the parties and perused the documents as well as citations, on which reliance have been placed by learned counsel for the parties.

7. The question which arising for consideration in the present petition is that whether the order of recovery made against the petitioner towards the excess payment was justified and is sustainable in the light of judgement passed by Supreme Court in the case of **Rafiq Masih (supra)**



and order passed by Full Bench of this Court in the case of **Jagdish Prasad Dubey (supra)** ?

8. So far as the pay anomaly between the Executive and Ministerial Cadre is concerned, this Court dealt with the issue in **W.A. No. 1760/2007 (Smt. Sushma Tiwari Vs. State of M.P.)** and other connected writ appeals and held the recovery is justified but also found that since the controversy arose in the light of order dated 01/01/2000 passed by M.P. State Administrative Tribunal in O.A. No. 45/1998, which was rectified vide order dated 17/11/2001 passed in the review application, therefore, the recovery during the period between 01/01/2000 to 17/11/2001 was quashed. The Writ Appeal No. 1760/2007 and other connected appeals were challenged before Hon'ble Supreme Court and in the case of **S.H. Baig (supra)**. The point pertaining to parity of pay scales between two cadres has been answered in the negative and against the employees, however, recovery of excess payment made between 01/01/2000 to 17/04/2001 was held to be not justified as the same was granted to the employees in wake of Judicial Order passed by the Tribunal. In the case of **S.H. Baig (supra)**, the Hon'ble Supreme Court has held that parity of pay scale cannot be given to the employees even on the principle of equal pay for equal work. Since, the method of recruitment, qualification for appointment, duties and responsibilities of Ministerial and Executive Staff



being different, Ministerial employees are not entitled for claiming parity of pay scale with the Executive Staff.

9. So far as the contention of the counsel for the petitioner that recovery cannot be effected in the light of judgement passed by the Supreme Court in the case of **Rafiq Masih (supra)** as well as this High Court in the case of **Jagdish Prasad Dubey (supra)** is concerned, this Court is of the opinion that in the light of judgement passed by Hon'ble Supreme Court in the case **S.H. Baig (supra)**, the submissions made by learned counsel for the petitioner is misconceived and liable to be rejected. On perusal of reply filed by the State as well as the judgement in the case of **S.H. Baig (supra)**, the whole controversy arose on account of an order passed by the M.P. State Administrative Tribunal in O.A. No. 45/1998, which was subsequently reviewed by order dated 17/11/2001 and order 01/01/2000 passed in O.A. No. 45/1998 was clarified. Thus, it cannot be said that the excess payment, which was made to the petitioner was on account of mistake of some calculation by the Authorities, but at the same time, it can also be said that the excess payment was not made to the petitioner on account of any misrepresentation on her part. The judgement passed in the case of **S.H. Baig (supra)** was delivered after coming into existence of the judgement of **Rafiq Masih (supra)**. Since, the order passed by Hon'ble Supreme Court in the case of **S.H. Baig (supra)** deals



with the issue in question, therefore, doctrine of *stare decisis* applies herein and judgment passed by Hon'ble Supreme Court is binding upon this Court. In the case of **S.H. Baig (supra)**, the Hon'ble Supreme Court did not quash the entire recovery proceedings, however, the restraint order was passed by the writ appellate Court thereby prohibiting the respondents to recover the excess payment for the period in between 01/01/2000 till 17/11/2001 was upheld by Hon'ble Supreme Court meaning thereby that the respondents shall not be entitled to recover the excess payment made to the petitioner for the period between 01/01/2000 to 17/11/2001. However, in the light of judgement by this Court in the case of **Sushma Tiwari (supra)** and **W.P. No. 13264/2020**, wherein Coordinate Bench of this Court dealt with similar issue and has held that the Ministerial Cadre Employee of Department was entitled for adhoc increase as per order dated 26/28-6-1979, but it was not included for revision of pay scale under the Rules of 1983, therefore, this Court is of the considered opinion that the entitlement of the petitioner to get adhoc increase can be considered by the respondents if applicable to the petitioner.

10. Learned counsel for the petition emphasized upon the Rule 9(4) of the M.P. Pension Rules, 1976 saying that Rule 9(4) provides for that no coercive action of recovery whatsoever can be initiated after four years of retirement which has been done by the impugned order. Moreso, it is



contended that in view of Rule 9(4) of the Rules, Governor is only empowered to may recoveries from a retired employee, that too within a period of four years from the date of retirement. This Court do not agree with the submission made by learned counsel for the petitioner as the Rule 9(4) of M.P. Pension Rules, 1976 pertains to departmental proceedings arose from any misconduct and negligence on the part of the employee. The facts of the instant case is altogether different and has already been settled by the pronouncement of Hon'ble Supreme Court in the case of **S.H. Baig (supra)**.

11. So far as question regarding recovery of the interest on the excess payment is concerned, the Division Bench of this Court in the case of **State of Madhya Pradesh and Others Vs. Rajendra Bhavsar** in **W.A. No. 120/2008** affirmed the order of writ court in **W.P. 826/2017**, wherein it is held that the interest component cannot be recovered from the petitioner as he is not at fault in the fixation of the pay scale. Further, in the case of **Manoj Sharma Vs. State of M.P. & Ors. Passed in W.A. No. 293/2021 dated 31/08/2021**, Division Bench of this Court has held that the undertaking given by the employee is limited to the recovery of principal amount and if there was no misrepresentation on the part of the employee to retain and consume the excess amount for number of years, thus, at the



time of refund, the employee ought not do be additionally burdened by recovery of interest over and above the principal amount.

12. Therefore, this Court is of the considered opinion that the excess payment was not made by the respondents on the basis of any misrepresentation on the part of the petitioner and recovery of the excess amount after such a longtime with interest would be very harsh on the petitioner, accordingly, the respondent cannot recover the interest on the principal amount.

13. Hence, in view of the above discussion, the instant writ petition is disposed of with the following directions:-

(i) If the recovery has not been effected so far, then the same shall be kept in abeyance for a period of two months from today and the respondents shall re-calculate the excess payment made to the petitioner by extending the benefit of circular dated 26/28- 6-1979, if it is applicable to the petitioner. However, it is made clear that the ad hoc increase shall not be included in the re-fixation of pay scale, as directed by the Division Bench of this Court in para 22 of the case of **Smt. Sushma Tiwari (supra)**.

(ii) The respondents shall also not recover any amount for the period 1/1/2000 till 17/11/2001.



(iii) The respondents shall re-assess the excess payment made to the petitioner(s) in the light of the judgement passed by the Supreme Court in the case of **S.H. Baig (supra)** and by the Division Bench of this Court in the case of **Smt. Sushma Tiwari (supra)** and a fresh order be passed.

(iv) If the recovery has already been effected, then the total excess payment made to the petitioners shall be re-calculated and if it is found that any amount in excess of the liability of the petitioner(s) has been recovered, then the same shall be repaid to the petitioner within 3 months from the date of receipt of certified copy of this order.

(v) It is made clear that the respondents shall not be entitled to recover the interest on the excess payment made to the petitioner.

14. With the aforesaid observation, present petition stands disposed off.

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

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