IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 2nd OF FEBRUARY, 2024

WRIT PETITION No. 1494 of 2023

BETWEEN:-

SMT. SUMAN RATHOR W/O LATE SHRI SHIV MANGAL SINGH RATHOR, AGED ABOUT 38 YEARS, OCCUPATION: HOUSEWIFE R/O ARMY BAJARIYA NEAR HEMA CONVENT SCHOOL GWALIOR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SASHANK INDRAPURKAR- ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY, DEPARTMENT OF HOME, GOVT. OF M.P. VALLABH BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)**

2. **DIRECTOR GENERAL OF POLICE POLICE HEADQUARTERS BHOPAL (MADHYA PRADESH)**

3. **CHIEF ORGANIZER GRAM RAKSHA SAMITI GWALIOR (MADHYA PRADESH)**

4. **JOINT DIRECTOR (TREASURY AND PENSION) MOTI MAHAL, GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI RAVINDRA DIXIT- GOVERNMENT ADVOCATE FOR RESPONDENT/STATE)

This petition coming on for admission this day, the court passed the following:

ORDER

1 . Petitioner has filed this writ petition under Article 226 of the Constitution of India challenging order dated 04.01.2023(Annexure P/1). By the

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impugned order dated 04.01.2023, direction has been given by the Chief Organizer, Gram Raksha Samiti, Gwalior for making recovery of payment of an amount of Rs.10,21,250/- from the retiral dues of deceased.

2. It is the submission of learned counsel for petitioner that husband of petitioner was working on the post of Constable (Ministerial) ,who died on 15.12.2017. Department has taken out recovery of Rs.10,21,250/- on petitioner. The petitioner had made several representations seeking information as to how much of the petitioner's money has been recovered and how much is outstanding. But the said information was not provided by the department. There was no misrepresentation on the part of employee. Employee had died on 15.12.2017, thereafter, recovery has been ordered from the petitioner. Counsel for the petitioner relied on the order passed ***in Civil Appeal No. 7115/2010 dated 2.5.2022*** by the Apex Court in case of ***Thomas Daniel Vs. State of Kerala and others*** and submitted that if there is no misrepresentation on the part of employee concerned then recovery cannot be made. In these circumstances, impugned order may be quashed.

3 . Govt. Advocate for the State has opposed the prayer and submitted that as per Clause 6 of the circular dated 31.5.2011 mentions that if a government servant has died then recovery can be made from his legal representatives or from the member of the family.

4. Heard learned counsel for the parties.

5. As per Clause 6 of Circular dated 31.5.2011, it has been stipulated that if a government servant has died, then recovery cannot be made from his legal representatives or from the members of the family. The said aspect has been considered by the Coordinate Bench at Principal Seat Jabalpur in the case of **Smt. Chandravati Bairagi vs. State of M.P. in W.P. No. 18891/2022**

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dated 01.12.2022 and facts and circumstances in the present case stand at par with the facts of the said case. Since, employee has passed away, therefore, no recovery can be made in view of the Circular dated 31.05.2011.

6 . Considering the submission, impugned order dated 04.01.2023 (Annexure P/1) is hereby set aside and consequently no recovery can be made from the petitioner under this Act.

7. Petition stands **disposed of** in above terms.

(ANAND PATHAK)
JUDGE

Vishal

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