IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 2nd OF FEBRUARY, 2024

WRIT PETITION No. 25873 of 2021

BETWEEN:-

AAZAD KHAN W/O LATE SHRI SAFIR KHAN, AGED ABOUT 63 YEARS, OCCUPATION: RETIRED TEACHER/UDT WARD NO. 20, HOUSE NO. 337, JAIL ROAD, NEAR NALA BHIND (MADHYA PRADESH)

.....PETITIONER

(BY SHRI R.P. SIINGH - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY VALLABH BHAWAN (MADHYA PRADESH)**

2. **DISTRICT EDUCATION OFFICER BHIND (MADHYA PRADESH)**

3. **BLOCK MEDICAL OFFICER (BEO) BLOCK ATER (MADHYA PRADESH)**

4. **DDO/ SANKUL PRACHARYA GOVT. HIGHER SEC. SCHOOL JABASA TEH ATER BHIND (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SOHIT MISHRA - GOVERNMENT ADVOCATE)

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

ORDER

The present petition is filed under Article 226 of the Constitution seeking following relief:-

"7.1 That, the impugned recovery order Annexure P-3 undated

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passed by relevant respondent authorities may kindly be set aside.

7.2 that, respondent authorities further may kindly be directed to refund the illegally recovered amount Rs.206722/- with 12% interest till the realization of amount from deposited/due date within a stipulated period of three months.

7.3 That, any other relief doing Justice into the matter including cost of petition, advocate fee etc. may also kindly be awarded to the petitioner."

It is the submission of learned counsel for petitioner that petitioner entered into the service of respondent/department on 16.11.1984 as Assistant Teacher thereafter he was promoted as Upper Division Teacher (U.D.T.) in the year 2013 and retired on 23.11.2020. The present petition is filed against the order (Annexure P/3), whereby the relevant respondent/authority recovered the excess amount of Rs.206722/- with interest in the name of recovery of excess salary payment without conducting any inquiry and without issuing any show cause notice to the petitioner about the recovery and after his retirement all of sudden it was directed to the petitioner that PPO shall not be issued if the amount in question is not deposited, however, the same has been deposited on 17.06.2021. Learned counsel for petitioner relied upon the Judgment of Apex Court in the cases of **State of Punjab and others Vs. Rafiq Masih (White Washer), 2015 (1), MPHT 130 (SC) Para** 11, **Thomas Deniel Vs. State of Kerala and others 2022 SCC Online SC 536 and High Court of Punjab and Haryana & others Vs. Jagdev Singh** reported in **2016 SCC Online SC 748** and sought parity.

Learned counsel for respondent/State opposed the prayer and submitted that due to calculation mistake, some extra benefits were given to the petitioner which were not legitimately payable to her. Therefore the said amount has been recovered. There is no arbitrariness or illegality.

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Heard counsel for the rival parties and perused the documents appended thereto.

This is a case where petitioner, a lady aged 63 years, was a UDT at the relevant point of time and she got excess payment made while making the payment of salary. Therefore, any benefits extended to her were not because of misrepresentation of petitioner or concealment of any facts.

In the case of **Rafiq Masih (supra), Thomas Daniel (Supra) and Jagdev Singh (supra**), it has been held that if petitioner does not misrepresent and has not given any undertaking, then no recovery can be issued against her. Here, in the present case, respondents failed to refer any undertaking given by petitioner. Similarly, petitioner did not misrepresent and was not instrumental in concealment of any facts. Therefore, the instant petition stands **allowed** and impugned order (Annexure P/3) is set aside. Since recovery has already been made by the respondents, therefore, recovered amount be returned back to the petitioner within a period of four months.

With the aforesaid direction, the present petition stands allowed and disposed of.

E-copy/certified copy as per rules.

(MILIND RAMESH PHADKE)
JUDGE

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