IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

ON THE 2nd OF FEBRUARY, 2024

WRIT PETITION No.8400 of 2020

BETWEEN:-

AABHUSHAN PAUL S/O SUSHIL, AGED ABOUT 48 YEARS, OCCUPATION: SERVICE CHHAVNI, AGAR, DISTRICT - AGAR MALWA (MADHYA PRADESH)

(SHRI YASH PAL RATHORE, ADVOCATE)

AND

1. **STATE OF M.P. THROUGH DEPARTMENT OF PUBLIC HEALTH AND FAMILY WELFARE SECRETARY VALLABH BHAWAN, MANTRALAYA, BHOPAL (MADHYA PRADESH)**
2. **DIRECTORATE OF HEALTH SERVICES THROUGH COMMISSIONER 4-6 FLOOR SATPURA BHAWAN, BHOPAL (MADHYA PRADESH)**
3. **CHIEF MEDICAL AND HEALTH OFFICER PUBLIC HEALTH AND FAMILY WELFARE DEPARTMENT, AGAR MALWA (MADHYA PRADESH)**

.....RESPONDENTS

(MS. URMILA MALVIYA, PANEL LAWYER)

This petition coming on for admission this day, ***JUSTICE SUSHRUT ARVIND DHARMADHIKARI*** *passed the following:*

ORDER

Matter is heard finally with the consent of parties.

2. In this petition under Article 226 of Constitution of India, the petitioner has approached this Court being aggrieved by the inaction of

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the respondents vide order dated 04/05/2020 (Annexure-P/1), by which the respondents have revised pay fixation and directed for the recovery of Rs.1,49,685/- in installments @ Rs.12,000/- per month.

3. Brief facts of the case are that the petitioner was initially appointed on the post of "Multiple Health Worker" on 20/12/1999, which is Class-IV post. In the year 2010, pay-scale was revised and one increment was granted to the petitioner, further in the year 2011 pay fixation was done. Vide impugned order dated 17/10/2019 respondents revised pay-scale and withdrawn the pay fixation done earlier. Vide order impugned dated 04/05/2020 respondents arbitrary directed for deduction of Rs.12,000/- per month uptill Rs.1,49,685/- is not recovered from the salary of the petitioner.

4. Learned counsel for the petitioner submitted that petitioner is Class-IV employee and huge amount was arbitrarily directed to be recovered without furnishing any details and also without granting any opportunity of hearing.

5. Learned counsel for the petitioner challenges the aforesaid recovery on the strength of judgment of the Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc (2015 (1) MPHT 130 (SC)**, wherein it has been held as under :-

> "While it is not possible to postulate all situations of hardships where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:
>
> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
>
> (ii) Recovery from retired employees, or employees who are due to retire within one year of the order of recovery.

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(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

6. Learned counsel for the petitioner has relied upon Clauses (i) and (iii) above to bolster his submissions. It is submitted that neither during petitioner's entire service career nor at the time of revision of pay-scale any undertaking was ever furnished by the petitioner. That apart, the entire recovery without any notice and opportunity of hearing is patently illegal for want of observance of principles of natural justice. Therefore, the impugned recovery, deserves to be quashed.

7. Per contra, learned Panel Lawyer for the respondents/State contended that pay of the petitioner was revised w.e.f. 01/07/2010 but he was wrongly granted pay-scale i.e. of Rs.305/- in excess and the said mistake was continued till September, 2019, therefore, the said recovery was sought to be made.

8. The matter was referred to the Treasury for approval of pay fixation, at that time the Treasury took objection and when this mistake was noticed, the recovery with interest was initiated against the petitioner on account of erroneous pay-scale given to him, for which the petitioner is not entitled, therefore, the amount paid in excess deserves to be recovered.

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9. With the aforesaid submissions, learned Panel Lawyer for the respondents/State submitted that no illegality has been committed while ordering the recovery.

10. In response, learned counsel for the petitioner contends that judgment of Supreme Court in the case of **High Court of Punjab and Haryana Vs. Jagdev Singh passed in Civil Appeal No.3500 of 2006** is distinguishable on facts and has no application to the factual matrix in hand, in as much as, at the time of extension of benefit of revised pay scale neither any undertaking was required from the petitioner nor petitioner furnished any such undertaking. As such, the judgment of the Apex Court in the case of **Rafiq Masih (Supra)** has full application.

11. Heard learned counsel for the parties.

12. Looking to the factual matrix in hand and also the fact that the issue with regard to recovery has been settled by Apex Court in the matter of **Rafiq Masih (Supra)** the recovery as sought by the respondents is illegal. Admittedly, no undertaking of the nature as referred to in paragraph 9 of the judgment in **Jagdev Singh (Supra)** was either asked for or furnished by the petitioner. Under these circumstances, judgment of Apex Court in the case of **Rafiq Masih (Supra)** has full application to the facts in hand; firstly for the reason that neither the recovery from the employee belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) and; secondly the recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued cannot be made, which is covered as per Clause (i) and (iii) of the **Rafiq Masih (Supra)**, as quoted above.

13. Consequently, the impugned order of recovery dated 04/05/2020 is hereby **quashed**. The respondents are directed to refund the amount

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recovered from the petitioner with interest at the rate of 6% per annum from the date of recovery till its payment, within six weeks from the date of submission of certified copy of this order by the petitioner.

14. The petition, accordingly, stands **allowed and disposed off**.

No order as to costs.

(S. A. DHARMADHIKARI)
JUDGE

Aiyer*

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