IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 2nd OF FEBRUARY, 2024

WRIT PETITION No. 12314 of 2020

BETWEEN:-

AVKA DAWAR W/O SHRI WAMAN DAWAR, AGED ABOUT 40 YEARS, OCCUPATION: SERVICE, ADD. GRAM-KARAMPURA, POST-BHATKI, TEHSIL PANSEMAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI RANJEET SEN - ADVOCATE)

AND

1. **STATE OF M.P. THROUGH PRINCIPAL SECRETARY DEPTT. PUBLIC HEALTH AND FAMILY WELFARE , VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **CHIEF MEDICAL AND HEALTH OFFICER COMMUNITY HEALTH CENTRE PANSEMAL (MADHYA PRADESH)**

3. **CHIEF BLOCK MEDICAL AND HEALTH OFFICER COMMUNITY HEALTH CENTRE PANSEMAL (MADHYA PRADESH)**

4. **DISTRICT TREASURY OFFICER BADWANI (MADHYA PRADESH)**

5. **JOINT DIRECTOR DIRECTORATE OF TREASURY AND ACCOUNTS DIVISIONAL OFFICE INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ANENDRA SINGH PARIHAR- P.L. FOR STATE)

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

ORDER

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1. By this writ petition, the petitioner who is working as ANM has challenged the order dated 16/7/2020 (Annexure P/1) passed by respondent No.1 and the calculation sheet (Annexure P/2) by which a recovery of a sum of Rs.48,408/- along with interest of Rs.61,910/- total sum of Rs.1,10,318/- has been directed.

2. Respondents have filed the reply taking the stand that as per the recommendation of the Brahama Swarup Committee, the petitioner was entitled to a particular pay - scale w.e.f. 1/4/2006 but while fixing the pay the error was committed and the petitioner was fixed in higher pay-scale and accordingly payment was made to him hence the petitioner has received the excess amount w.e.f 1/4/2006 therefore, the recovery has been directed.

3. Learned counsel for the petitioner submits that the issue involved in the present case is fully covered by order dated 3/10/2017 passed in W.P.No.2196/2017 in the matter of ***Kailash Rai Sunahre V/s. State of M.P. & Ors.***

4. Learned counsel for the respondents/State opposed the writ petition but could not despite the fact that the case of the petitioner is identical to the case of ***Kailash Rai Sunahre (supra).***

5. The Coordinate bench of this Court in the case of Kailash Rai Sunahre (supra) has passed the following order dated 3/10/2017 :-

"Parties through their counsel.

The petitioner before this Court, who is working on the post of Multipurpose Health Worker is aggrieved by the order dated 4.06.2016 issued by the respondents by which recovery of Rs.51,754/- along with interest @ 12% Rs.29,590/- has been ordered.

Petitioner's contention is that he is a class- III employee appointed

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on 02.02.1995 and he is still in service. It has been stated that on account of revision of pay-scale in light of Revision of Pay Rules, 2009, he was granted higher pay-scale and now recovery has been ordered on the ground that he was entitled for the pay-scale of Rs.3500-5200/- (GP 2100).

Respondents have filed a reply in the matter and their stand is that the petitioner has submitted an undertaking annexure R-5 at the time the pay-fixation has been done even though he is a class-III employee.

This Court has carefully gone through annexure R-5, which is certainly not an undertaking, it is an option given by the petitioner in the matter of grant of higher pay-scale and therefore, the option cannot be treated as an undertaking.

Hon'ble the Supreme Court in the case of State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc, reported in 2015(1) MPHT 130 (S.C.) in paragraph No.12 has held as under :-

> *"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*

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(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(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."

Undisputedly, the petitioner is serving as a class-III employee and the recovery ordered is bound to cause undue hardship to him. Resultantly, in light of the aforesaid judgment, the recovery is hereby quashed and the pay-fixation is upheld.

Respondents have also placed reliance upon the judgment delivered in the case of Kailash Kushwah Vs. State of M.P. and others (W.P. No.1484/2016 (S).

In the aforesaid case, the petitioner therein has submitted an undertaking whereas in the present case, no such undertaking has been given by the petitioner. Resultantly, the writ petition stands allowed. The amount, if any, has been recovered from the petitioner be refunded

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back to the petitioner within 90 days, however, the pay-fixation is upheld.

With the aforesaid, the writ petition stands disposed of.

6. The case of the petitioner stands on the same footing, hence having regard to the reasons which have been assigned in the case of Kailash Rai Sunahre (supra) and taking note of the judgment of the Supreme Court in the case of State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc, reported in 2015(1) MPHT 130 (S.C.), I am of the opinion that the petitioner is entitled to the same relief.

7. As a result, I am of the opinion that the writ petition filed by the petitioner deserves to be allowed and is accordingly allowed by setting aside the impugned order dated 16/7/2020 (Annexure P/1) and recovery (Annexure P/2). However the pay fixation is maintained. The amount recovered from the petitioner be refunded to him within a period of 3 months from the date of furnishing of certified copy of this order.

C.c. as per rules.

(PRANAY VERMA)
JUDGE

SS/-

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