



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 11th OF AUGUST, 2025

WRIT PETITION No. 450 of 2012

SMT.SNEHLATA SHARMA

Versus

STATE OF M.P AND OTHERS

Appearance:

Shri Alok Shrivastava - Advocate for petitioner.

Shri Vijay Sundaram - Government Advocate for respondent/State.

ORDER

This petition, under Article 226 of Constitution of India, has been filed seeking the following relief (s):-

(A) Pass the order allowing this writ petition and declaring the alleged recovery illegal and quash the same with the issuance of writ in the nature of mandamus or any order directing the respondents to refund the recovery amount with interest at the rate of 24% per annum to the petitioner.

(B) Pass any other orders as His Lordship thinks fit and suitable in the factual and legal matrix of the instant case for the ends of justice. Including the cost and compensation to the petitioner from the respondents.



2. Petitioner's husband was working on the post of timekeeper. He expired on 03.02.2011. Husband of petitioner was retired on 28.02.2005 as a time-keeper. An amount of Rs.1,32,999/- (as mentioned in Annexure P-6 dated 15.06.2005) was recovered from him. The said recovery was due to excess payment made to husband of petitioner.

3. Counsel for the petitioner submitted that the recovery after the death of the employee is not permissible. He further submitted that the alleged excess amount has been paid on account of wrong fixation of salary of the petitioner's husband from 30.10.1999 till February, 2003. He further submitted that an amount of Rs.1,32,999/- has been directed to be recovered towards interest which is even otherwise not permissible inasmuch as the petitioner's husband was not responsible for the wrong fixation. He relied upon the Full Bench decision of this Court in the case of **State of Madhya Pradesh & others Vs. Jagdish Prasad Dubey, (2024) 2 M.P.L.J.198**.

4. On the other hand, counsel for the State opposed the prayer and submitted that the excess amount was paid on account of erroneous fixation of salary of petitioner's husband and therefore, the respondents are entitled to recover the amount paid in excess.

5. Considered the arguments and perused the record.

6. The Full Bench of this Court in the case of **Jagdish Prasad Dubey (supra)**, has dealt with the similar issue and held as under:

"35. (a) Question No. 1 is answered by holding that recovery can be effected from the pensionary benefits or from the salary based on the undertaking or the indemnity bond given by the employee before the grant of benefit of pay refixation. The question of hardship of a Government servant has to be taken note of in pursuance to the



judgment passed by the Larger Bench of the Hon'ble Supreme Court in the case of Syed Abdul Qadir (supra). The time period as fixed in the case of Rafiq Masih (supra) reported in (2015) 4 SCC 334 requires to be followed. Conversely an undertaking given at the stage of payment of retiral dues with reference to the refixation of pay or increments done decades ago cannot be enforced.

(b) Question No. 2 is answered by holding that recovery can be made towards the excess payment made in terms of Rules 65 and 66 of the Rules of 1976 provided that the entire procedures as contemplated in Chapter VIII of the Rules of 1976 are followed by the employer. However, no recovery can be made in pursuance to Rule 65 of the Rules of 1976 towards revision of pay which has been extended to a Government servant much earlier. In such cases, recovery can be made in terms of the answer to Question No.1.

(c) Question No.3 is answered by holding that the undertaking given by the employee at the time of grant of financial benefits on account of refixation of pay is a forced undertaking and is therefore not enforceable in the light of the judgment of the Hon'ble Supreme Court in the case of Central Inland Water Transport Corporation Limited (supra) unless the undertaking is given voluntarily."

7. The Apex Court has also dealt with the similar issue in the case of ***State of Punjab Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334***, wherein, the Apex Court held as under:-

"18. 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).



(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."

8. The Supreme Court in the case of **Jogeswar Sahoo and others Vs. District Judge, Cuttack and others** reported in **2025 (3) M.P.L.J. (S.C.) 25** has held as under:

"11. In the case at hand, the appellants were working on the post of Stenographers when the subject illegal payment was made to them. It is not reflected in the record that such payment was made to the appellants on account of any fraud or misrepresentation by them. It seems, when the financial benefit was extended to the appellants by the District Judge, Cuttack, the same was subsequently not approved by the High Court which resulted in the subsequent order of recovery. It is also not in dispute that the payment was made in the year 2017 whereas the recovery was directed in the year 2023. However, in the meanwhile, the appellants have retired in the year 2020. It is also an admitted position that the appellants were not afforded any opportunity of hearing before issuing the order of recovery. The appellants having superannuated on a ministerial post of Stenographer were admittedly not holding any gazetted post as such applying the principle enunciated by this Court in the above quoted judgment, the recovery is found unsustainable."



9. Husband of petitioner was a Class III employee. Recovery pertains to the year 2005 and it has been initiated without giving any show-cause notice to him or an opportunity of being heard. In view of the aforesaid legal position, the impugned recovery is not permissible. Therefore, while setting aside the impugned recovery, the respondents are directed to refund the amount of Rs.1,32,999/- to the petitioner. Since the impugned order was already passed on 15.06.2005 and the present petition has been filed on 12.01.2012, the petitioner is held not entitled to interest on the amount withheld by the respondents. However, the respondents shall pay interest @6% per annum on Rs. 1,32,999/- w.e.f. the date of filing of this petition i.e. 12.01.2012 till actual payment. It is made clear that in case no recovery is made from the retiral dues, petitioner is not entitled to the aforesaid relief.

10. Let the said exercise, as directed above, be completed within a period of 90 days from the date of submission of certified copy of this order.

11. The petition is accordingly *disposed of*.

(Anand Singh Bahrawat)
Judge