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WP-1683-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 22nd OF AUGUST, 2025WRIT PETITION No. 1683 of 2023*PURSHOTTAM PRASAD SHUKLA**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Ms. Anchan Pandey - Advocate for the petitioner.

Shri Deepak Sahu - Panel Lawyer for the respondents / State.

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ORDER

By way of this petition, the petitioner has put to challenge the recovery order issued at the time of settlement of retiral benefits. The recovery has been made from the gratuity to the tune of Rs.1,40,671/- upon retirement of the petitioner which took place on 30.06.2022.

2. The petitioner is admittedly a retired Class-IV employee who held the post of Dresser in Department of Public Health at the time of retirement. As per reply filed by the respondents, the recovery is on account of some erroneous fixation with effect from 01.01.2006 when he was erroneously granted one additional increment to which he was not entitled and therefore, his pay was re-fixed at the time of retirement and the impugned recovery has been effected.

3. The State has also relied on affidavit Annexure R-2 taken after retirement from the petitioner at the time of payment of gratuity whereby



petitioner has given consent for recovery of said amount and counsel for the respondents has vehemently stressed upon the said affidavit to defend the recovery.

4. The petitioner being a Class-IV employee and without there being any suppression or misrepresentation of fact at the time of receipt of erroneous benefits, the recovery is unsustainable in view of the judgment of Hon'ble Apex Court in the case of *State of Punjab and others Vs. Rafiq Masih and others 2015(4) SCC 334*.

5. So far as affidavit (Annexure R-2) is concerned, in terms of judgment of Full Bench of this Court in WA No.815/2017 (*State of M.P. Vs. Jagdish Prasad Dubey*) the said affidavit taken at time of settlement of pensionary benefits, can be said to be a forced undertaking in terms of the judgment of the Hon'ble Apex Court in the case of *Central Inland Water Transport Corporation Ltd and Anr. Vs. Brojo Nath Ganguly* reported in (1986) 3 SCC 156 and after considering the said judgment the Full Bench has held that undertaking or indemnity bond only at the time granting the erroneous benefit can be read against the employee. The Full Bench has held as under:-

"34. The said issue was considered by the Hon'ble Supreme Court in the aforesaid judgment in case of Central Inland Water Transport Corporation Limited (supra). It was held that the employer should not be allowed to take advantage of its position. Therefore, the condition of furnishing an undertaking cannot be forced upon a Government servant. However, if a Government servant is willing to furnish an undertaking then the situation would be otherwise. Therefore in all those cases where the Government servants have furnished an undertaking willingly at the time when the benefits of revision of pay have been extended to them, in such an event, they are bound by the undertaking and



not otherwise. Compelling undertaking cannot result in the recovery from a Government servant. Therefore, the Question No.3 is accordingly answered.."

6. In view of the aforesaid, no different outcome can be arrived at in view of the affidavit (Annexure R-2). The petition deserves to be and is hereby allowed. The impugned recovery from the gratuity is set aside. The amount already recovered be refunded back within 60 days failing which it will carry interest at the rate of 6% per annum from the date of this order.

(VIVEK JAIN)
JUDGE

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