

**HIGH COURT OF MADHYA PRADESH  
BENCH AT GWALIOR  
BEFORE  
SINGLE BENCH : SHRI JUSTICE ANAND PATHAK  
WRIT PETITION No. 17158 of 2022**

Pranay Pallav Tripathi

**Vs.**

The State of M.P. and Ors.

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Shri G.S.Sharma, learned counsel for the petitioner.

Shri N.S.Tomar, learned Government Advocate for  
respondents/State.

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**ORDER**

**[Delivered on this 1<sup>st</sup> day of July, 2024]**

The present petition is preferred under Article 226 of the  
Constitution seeking following reliefs:-

*7.1) That, the impugned order dated 16.06.2022  
(annexure P/1) may kindly be quashed.*

*7.2) That, the respondents authority be directed to  
release the pensionn and other benefit to the petitioner  
and the amount of Rs. 6,38,519/- not to be recovered  
from the pension or Gratuity of the petitioner and the  
amount recovered from the petitioner may kindly be*

*refunded with interest @ 12% per ann. to the petitioner.*

*7.3) That, the other relief doing justice including cost be awarded..*

2. Precisely stated facts of the case are that petitioner was initially appointed on the post of Lower Division Clerk on 18.02.1993 and thereafter, he was promoted on the post of Assistant Grade-III and retired on 31.03.2022 from the post of Assistant Grade-III. Pay scale of petitioner was revised from time to time on the basis of recommendation of the pay commission. The respondent /authority granted second time bound higher pay scale on completion of 20 years of service and granted the benefit of Higher Pay Scale + Grade Pay vide order dated 29.09.2020 (Annexure P-5).

3. After completing the age of superannuation, petitioner stood retired on 31.03.2022 but respondent /authorities did not start the pension and not paid the benefit on account of retirement. Petitioner submitted an application and all documents required for release of pension but to no avail and later on, vide order dated 16.06.2022 (Annexure P/1) impugned order has been passed and recovery to the tune of Rs.6,38,519/- was ordered because of excess payment made for the period of 18.02.2015 to 31.03.2022. Therefore, this petition has been filed.

4. It is the submission of counsel for the petitioner that excess payment has been made in which petitioner has not caused any misrepresentation or manipulation to receive excess payment.

Therefore, in view of the judgment of Apex Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334**, recovery order be quashed.

5. Learned counsel for the respondents/State opposed the prayer and submitted that petitioner was appointed in the respondents department as Assistant Grade-III with condition to pass Hindi Typing Examination but petitioner did not pass the same. Despite of non-passing Hindi Typing Examination, his services were regularized w.e.f. 20.03.2000 and benefits of annual increment were given w.e.f. 20.03.2001. Said benefit was given erroneously. Respondent /State filed relevant circular vide **Annexure R-1** to submit that passing of Hindi Typing Examination was an essential qualification for LDC.

6. As per the policy decision of State Government, instead of Kramonnati Vetanman benefit of time pay scale on completion of 10/20 years was to be given w.e.f. 01.04.2006. Such benefit was given to the petitioner with presumption that petitioner passed the Hindi Typing Examination and wrong fixation has been made at the relevant point of time. On retirement, when proposal was sent to the treasury for releasing retirement dues then treasury objected the such mistake committed by the department because of wrong fixation being made. Thereafter, impugned order has been issued which is being supported by the counsel for the respondents/State.

7. It is further submitted that benefit of time scale of pay was given to the petitioner, contrary to the scheme and not only this, petitioner furnished an undertaking vide Annexure R-2 in this regard.

In the said undertaking, petitioner gave his consent that in case excess payment is being made then same shall be liable for recovery. Therefore, according to respondents, when undertaking has been given then no case for interference is made out, especially in view of the judgment of Apex Court passed subsequent to the judgment of **Rafiq Masih (supra)** in the case of **High Court of Punjab and Haryana Vs. Jagdev Singh, (2016) 14 SCC 267** wherein factum of undertaking is considered. Therefore, he prayed for dismissal of petition.

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

9. This is the case where petitioner is seeking quashment of recovery order issued purportedly against him for excess payment given earlier. From the perusal of undertaking given by the petitioner filed as **Annexure R-2**, it is clear and categorical that petitioner has given undertaking in full senses and gave his consent regarding recovery of excess payment if any made to him. The said undertaking categorically mentions the fact that revised pay is provisional in nature and it is not final. Therefore, in view of the judgment of Apex Court in the case of **Jagdev Singh (supra)** ratio delineated in said case appears to be applicable in the present set of facts. In the said case, employee furnished an undertaking and Apex Court considered the aspect of undertaking and held in paras-8, 9, 10, 11 and 12 in following words:-

8. *The order of the High Court has been*

*challenged in these proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the Respondent in these proceedings, this position has been specifically admitted. Subsequently, when the rules were revised and notified on 7.5.2003 it was found that a payment in excess had been made to the Respondent. On 18.02.2004, the excess payment was sought to be recovered in terms of the undertaking.*

*9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. **This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on***

*notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.*

10. *In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc.* this Court held that while it is not possible to postulate all situations of hardship 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.

(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.*

**11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.**

*12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable installments. We direct that the recovery be made in equated monthly installments spread over a period of two years.*

10. This aspect has been considered in the case of **Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors., 2012 (4) M.P.L.J. 495** also and it has also discussed in detail and excess payment of public money is described as “**tax payers money**” which belongs neither to the officers who have effected over-payment nor that of the recipients. It is further held that any amount paid/received without authority of law can also be recovered bearing few exceptions of extreme hardships but not as a matter of right. In such situations, law implies an obligation on the payee to repay the money, otherwise, it would amount to unjust enrichment.

11. In the present case, another aspect goes against the petitioner is that petitioner was getting a benefit for which he was not entitled otherwise also. Petitioner did not pass Hindi typing examination which was mandatory at the relevant point of time. However, if case of petitioner is accepted then it would set a bad precedent for an employee who is otherwise not entitled to get benefit because of non-attainment of mandatory service conditions.

12. In other words, petitioner rendered disqualified to get increment, because he did not pass Hindi Typing Examination. Now by virtue of negligence or overlook of Accountant (sometimes negligence/overlooking may be deliberate) he would render the position, otherwise reserved for worthy/entitled employees based upon their merit.

13. This is not a case of recovery where in ordinary course of business, particular pay fixation was made erroneously. It is a case



where certain conditions were attached for getting the particular pay scale. On this count also, petitioner cannot be given premium over his own failure (failure to pass Hindi Typing Examination).

14. Therefore, in view of the above discussion and guidance of Apex Court in the case of **Chandi Prasad Uniyal and Ors. (supra) High Court of Punjab and Haryana (supra)**, no case for interference is made out. One contempt petition has also been preferred by the petitioner vide Contempt Petition No.2146/2022 in which the facts have been mentioned that respondents /authority recovered the amount as per impugned order dated 16.06.2022 despite stay order passed by this Court. Therefore, recovery has already been made. Therefore, no order is required to be passed about recovery through installments. After due deduction necessary Pension Payment Order (P.P.O.) be issued and entitled pension and pensionary benefits be awarded to the petitioner without delay.

15. Petition is dismissed accordingly.

**(Anand Pathak)**  
**Judge**