IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE MANINDER S BHATTI

ON THE 5th OF AUGUST, 2022

WRIT PETITION No. 4323 of 2017

Between:-

SMT. CHANDRA PRABHA PARASAR W/O LAT SHRI BRAJ BHUSHAN PARASAR, AGED ABOUT 63 YEARS, DALI BABA PUNJABI COLONY, NEAR OF PUMP HOUSE SATNA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI R. PANDEY, LEARNED COUNSEL FOR THE PETITIONER)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH THE SECRETARY MINISTRY OF GENERAL ADMINISTRATION VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **COLLECTOR SATNA SATNA (MADHYA PRADESH)**

3. **ACCOUNTANT GENERAL GWALIOR LEKHA BHAWAN, (A AND E) II, JHANSI ROAD, GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SACHIN JAIN, LEARNED PANEL LAWYER FOR THE RESPONDENTS/STATE.)

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

ORDER

The petitioner has filed this petition while praying for following reliefs:-

"7.(A) To set aside the impugned order Annexure P/1 as far as it relates to recovery of Rs. 72678/-.

(B) To issue a writ of mandamus/direction to respondent to pay

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fund amount of Rs. 18,710/- with rate of interest 12% per annum from the date of retirement i.e. 31/01/1998.

(C) Any other relief deemed fit and proper may also be awarded to the petitioner with cost."

The petitioner is the widow of deceased employee, who was working in the post of Upper Division Clerk with the respondents and was superannuated w.e.f. 31-01-1998. Eventually, he died on 15-04-1999. After the death of the husband, the petitioner herein approached the respondents claiming terminal dues of the deceased employee however, when no action was taken, the petitioner filed this petition before this Court vide WP No. 9144/08 (s), the same was disposed of with a direction to the respondents to consider the claim of the petitioner vide order dated 12-12-2015 in WP No. 9144/08 (s). Pursuant to the order of this Court, the respondents have issued order dated 29-12-2016 contained in Annexure P/1, by which, a recovery to the tune of Rs. 72678/- is being proposed from the retiral dues of the deceased employee.

Learned counsel for the petitioner contends that her husband retired while attaining the age of superannuation on 31-01-1998. Unfortunately, he died on 15-04-1999 and thereafter, the petitioner is fighting tooth and nail to seek disbursement of terminal dues of her deceased husband and therefore, she filed a petition vide WP No. 9144/08 (s), wherein this Court had directed the respondents to consider the petitioner's representation. For the first time, after almost 17 years of the death of the deceased employee, the respondents have issued order dated 29-12-2016 (Annexure P/1), by which, it is being said that there were certain withdrawals at the behest of the deceased employee, therefore, an amount of Rs. 72678/- is to be recovered from the retiral dues. The counsel contends that the proposed recovery is *non est* inasmuch as, the

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Apex Court in the case of ***State of Punjab Vs. Rafiq Masih (2015) 4 SCC 334***, has held that there cannot be any recovery against a Class-III/IV employees after superannuation. Moreover, in the present case the Collector himself vide communication contained in Annexure-P/2 has recommended the case to the Office of the Accountant General however, the order impugned has been passed in a purely capricious and callous manner and therefore, the same deserves quashment.

Per contra, learned counsel for the respondents while taking this Court to Annexure R/3/1 submits that there were certain withdrawals during the service tenure of the deceased employee and therefore, since, those were not repaid thus, while taking into consideration, the principal as well as interest amount, an amount of Rs. 72678/- is to be recovered from the retiral dues of the deceased employee. Thus, placing reliance on the decision of this Court filed with return as Annexures R/3/4, R/3/5 and R/3/6, submits that there were withdrawals at the instance of the deceased employee, under the statutory rules, he was obliged to refund the amount. The same having not been done, the employee was also liable to pay the amount of interest. Thus, submits that no interference is warranted.

Having heard the rival submission and also upon perusal of the record, it reveals that Annexure P/1, which is a communication impugned, has been issued in the year 2016 (almost after 17 years of death of the deceased employee and after 18 years, when the deceased employee was retired.). Prior to this, there was no communication by the respondents apprising the deceased employee that there is an outstanding amount of Rs. 72678/-, which is to be refunded by him. Moreover, it appears that the respondents were sitting tight

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over the matter for a prolonged 16 years and when this Court in WP No. 9144/08 (s), directed the respondents to consider the petitioner's representation then only, the same has ensued in passing of the impugned order dated 29-12-2016 contained in Annexure P/1.

In the considered view of this Court, the impugned order is *non est* and has also been passed in a purely mechanical manner inasmuch as, there were no communication at the instance of the employer to apprise the the deceased employee as regards the part withdrawal, which is reflected in Annexure R/3/2. A perusal of Annexure R/3/2, also reveals that there were certain withdrawals of meager amount in the years 1972, 1974, 1976, 1979, 1982 and 1989 and the total amount comes to Rs. 9800/-. Thus, it appears that on the principal amount of Rs. 9800/-, the respondents have also added the interest, and now the total amount comes to Rs. 72678/-, which is being proposed to be recovered from the terminal dues of the deceased employee.

In the considered view of this court, the Annexure R/3/1 and R/3/2 is misconceived. Firstly, the deceased employee was never intimated about the past withdrawals and secondly, the proposed interest could not have been charged, as there was no intimation to the deceased employee during his service career or even till his death.The Annexure P/1 has been apparently issued after almost 17 years of death of the deceased employee therefore, the same is unsustainable.

Therefore, keeping in view the law laid down by the Apex court in the Case of *Rafiq Masih (supra),* this court is of the considered view that the impugned communication contained in Annexure P/1 dated 29-12-2016 deserves to be and accordingly quashed.

The respondents are directed to make payment of all the retiral dues

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along with admissible interest to the petitioner after deducting an amount of Rs. 9800/-(towards part withdrawals), within a period of 90 days from the date of production of certified copy of this order.

The petition is **allowed** to the extent indicated hereinabove.

C.C as per rules.

(MANINDER S BHATTI)
JUDGE

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