

[2022] 7 S.C.R. 67

M.P. MEDICAL OFFICERS ASSOCIATION

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v.

THE STATE OF MADHYA PRADESH & ORS.

(Civil Appeal No. 5527 of 2022)

AUGUST 26, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Service Law – Recovery of excess amount paid – Employees-members of the appellant association were wrongly granted certain benefits under a circular till it was subsequently withdrawn, having been issued without authority and also without approval of Finance Department – State Govt. ordered recovery of the excess amount paid with interest – Single Judge quashed the communication withdrawing the circular and the orders of recovery of excess amount – Order set aside by Division Bench – Held: Division Bench justified in setting aside the order passed by Single Judge quashing the communication withdrawing the circular, considering the grounds on which the circular was withdrawn – Impugned order upholding the communication withdrawing the circular not interfered with – However, Division Bench erred in quashing the order passed by Single Judge setting aside the recovery of excess amount paid – It was the Department/State that issued the circular and paid the benefits thereunder – There was neither any misrepresentation by the concerned employees nor can the mistake be attributed to them – Mistake, if any, can be said to be that of the Department/State that issued the circular – On facts, State not justified in ordering recovery of the excess amount paid, also as some of the employees have retired and the recovery shall be from their pension/pensionary benefits – Order passed by Division Bench upholding the recovery of the excess amount paid, set aside – No recovery of the excess amount paid – However, for all other purposes including pay fixation and pension etc., the same shall be worked out as per order dtd 26.08.08 – M.P. Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 2007 – M.P. Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 1988.

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State of Punjab and others v. Rafiq Masih, (2015) 4 SCC 334 : [2014] 13 SCR 1343 – held inapplicable.

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Case Law Reference**[2014] 13 SCR 1343 held inapplicable Para 5**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5527 of 2022.

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From the Judgment and Orders dated 11.10.2018 of the High Court of Madhya Pradesh Principal Bench at Jabalpur in W.A. No.1073 of 2018.

With

Civil Appeal Nos. 5528, 5529 and 5530 of 2022.

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P. S. Patwaria, Sr. Adv., Sanjay Sarin, Rohin Oza, Ms. Meghna Mittal, Ms. Gagan Deep Kaur, Aditya Sarin, Pushkar Karni Sinha, Dinkar Kalra, Prashant Shukla, Ms. Anushree Shukla, Ashu Bhindwar, Ankit Tiwari, Ms. Shubhi Bharadwaj, Abhinav Ramkrishna, Divyesh Pratap Singh, Advs. for the Appellant.

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Saurabh Mishra, AAG, Ms. Mrinal Elker Mazumdar, Ankit Mishra, Rahul Kaushik, Pashupathi Nath Razdan, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

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1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Madhya Pradesh, Jabalpur in Writ Appeal No. 1073 of 2018 by which the High Court has allowed the said writ appeal preferred by the State of Madhya Pradesh and others and has quashed and set aside the judgment and order passed by the

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learned Single Judge passed in Writ Petition No. 6236 of 2014, the original writ petitioners – M.P. Medical Officers Association and other individual members of the Association have filed the present appeals.

2. The members of the appellant Association and other appellants were working as Specialists and Dental Specialists respectively under

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the M.P. Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 1988. The said Rules were repealed by the M.P. Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 2007 published in the Gazette on 27.03.2008. The State issued an order on 26.08.2008 to grant higher pay-scale on completion of six years to the Medical Officers, Dental Surgeons and officers working in the Specialist

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cadre in a four tier pay-scales. Later, the circular dated 23.05.2009 was issued to the effect that the period from the date of appointment shall be counted as notional appointment though the benefit of the scheme shall be granted from the date of issuance of the order of the State Government dated 26.08.2008. In the circular dated 23.05.2009, it was also provided that the fourth tier pay-scale will be payable on completion of the prescribed service period, but the financial benefits shall be extended w.e.f. 26.8.2008. The period between the date of completion of the prescribed period and 26.08.2008 shall be eligible for notional pay fixation. Having found that the circular dated 23.05.2009 was wrongly issued and was issued without approval of the Finance Department and as the benefits flowing from the circular dated 23.05.2009 were having financial implications/burden and it was found that the said circular was issued by the authority, who had no competence and therefore vide communication dated 30.05.2012, the circular dated 23.05.2009 came to be withdrawn. However, the respective Medical Officers working as Specialists, Dental Specialists and the officers working in the specialist's cadre – members of the appellant association were granted the actual benefit flowing from the circular dated 23.05.2009 till 30.05.2012, i.e., till the circular dated 23.05.2009 was withdrawn. As the benefits were wrongly paid under the circular dated 23.05.2009, which was subsequently withdrawn on 30.05.2012, the State Government ordered recovery of the excess amount paid alongwith the interest.

2.1 The communication dated 30.05.2012 withdrawing the circular dated 23.05.2009 and the recovery of the excess amount paid alongwith the interest were the subject matter of Writ Petition No. 6236 of 2014 preferred by the M.P. Medical Officers Association. Individual writ petitioners also filed their separate writ petitions, however, the Writ Petition No.6236 of 2014 preferred by the Association was treated as the lead matter. By common judgment and order, the learned Single Judge allowed all the writ petitions and quashed the communication dated 30.05.2012 withdrawing the circular dated 23.05.2009. The learned Single Judge also quashed the orders of recovery of the excess amount paid alongwith the interest.

2.2 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge dated 20.12.2017 passed in Writ Petition No. 6236 of 2014, the State preferred Writ Appeal No. 1073 of 2018 before the Division Bench of the High Court. By the impugned

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- A judgment and order, the Division Bench of the High Court has allowed the aforesaid writ appeal and has quashed and set aside the judgment and order passed by the learned Single Judge quashing and setting aside the communication dated 30.05.2012 withdrawing the circular dated 23.05.2009 and also quashing the recovery of the excess amount paid alongwith the interest. The impugned judgment and order passed by the Division Bench of the High Court passed in Writ Appeal No. 1073 of 2018 is the subject matter of the present appeals.
3. We have heard Shri P.S. Patwalia, learned Senior Advocate appearing on behalf of the appellant and Shri Saurabh Mishra, learned Additional Advocate General appearing on behalf of the respondent State.
- C 4. Having heard the learned counsel for the respective partis and having gone through the impugned judgment and order passed by the Division Bench of the High Court and the ground on which the circular dated 23.05.2009 was withdrawn namely, the same was issued without authority and/or competence and was issued without any approval and/or concurrence of the Finance Department as the benefits flowing from the circular dated 23.05.2009 were having financial implications/burden, we see no reason to interfere with the impugned judgment and order passed by the Division Bench of the High Court upholding the communication dated 30.05.2012 withdrawing the circular dated 23.05.2009. The Division Bench of the High Court is absolutely justified in quashing and setting aside the judgment and order passed by the learned Single Judge of the High Court quashing the communication dated 30.05.2012 withdrawing the circular dated 23.05.2009.
- 4.1 However, at the same time, the Division Bench of the High Court has erred in quashing and setting aside the judgment and order passed by the learned Single Judge allowing the writ petitions and setting aside the recovery of excess amount paid for the period between 2009 to 2012, which was sought to be recovered with interest.
- F 5. It is not in dispute that the members of the appellant association, who were serving as Specialists, Dental Specialists and officers in the specialist's cadre got the benefits under the circular dated 23.05.2009. It was the Department/State, who issued the circular dated 23.05.2009 and paid the benefits under the circular dated 23.05.2009 to the members of the appellant association, which subsequently came to be withdrawn by the State in the year 2012. Therefore, as such, there was neither any misrepresentation on the part of the concerned employees – members

of the appellant association nor can the mistake be attributed to them. The mistake, if any, can be said to be that of the Department/State, who issued the circular dated 23.05.2009 under which the members of the association were given certain benefits till the same was withdrawn in the year 2012. Therefore, in the peculiar facts and circumstances of the case, the State was not justified in ordering recovery of the excess amount paid along with the interest. It is true that *stricto sensu*, the decision of this Court in the case of **State of Punjab and others Vs. Rafiq Masih, (2015) 4 SCC 334** may not be applicable. However, at the same time, as observed hereinabove, and in the facts and circumstances of the case, the State was not justified in ordering recovery of the excess amount paid with interest, more particularly, when it is reported that some of the doctors/dentists – members of the association have retired on attaining the age of superannuation and the recovery shall be from their pension/pensionary benefits. However, at the same time, their pay fixation and the pension shall have to be as per the order dated 26.08.2008.

6. In view of the above and for the reasons stated above, all these Appeals Succeed in part. The impugned judgment and order passed by the Division Bench of the High Court upholding the recovery of the excess amount paid alongwith interest is hereby quashed and set aside.

In result, there shall not be any recovery of the excess amount paid pursuant to the circular dated 23.05.2009 till the same was withdrawn on 30.05.2012. However, for all other purposes including the pay fixation and pension etc., the same shall be now worked out as per the order dated 26.08.2008, as if, the circular dated 23.05.2009 was never issued.

Present appeals are accordingly partly allowed to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to costs.

Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Appeals partly allowed.