

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 22nd OF NOVEMBER, 2023

WRIT PETITION No. 5504 of 2017

BETWEEN:-

**BASANT RAIKWAR S/O RAM LAL, AGED ABOUT 61
YEARS, OCCUPATION: RETIRED ASST. GRADE -I
COMMERCIAL TAX OFFICE BHARATPURI, UJJAIN
(M.P.) C-57 SARTHAK NAGAR, UJJAIN (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI KHEN CHAND RAIKWAR-ADVOCATE)

AND

- 1. COMMERCIAL TAX PRINCIPAL SECRETARY
VALLABH BHAWAN, BHOPAL (MADHYA
PRADESH)**
- 2. DY COMMISSIONER COMMERCIAL TAX
BHARATPURI, UJJAIN M P UJJAIN (MADHYA
PRADESH)**
- 3. JOINT DIRECTOR KOSH AND LEKHA
BHARATPURI, UJJAIN (MADHYA PRADESH)**
- 4. TREASURY OFFICER UJJAIN DISTT UJJAIN
UJJAIN (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SUDHANSHU VYAS-ADVOCATE)

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

ORDER

The petitioner is challenging the action of the respondents whereby they
have recovered the amount of Rs.32448/- from gratuity due to excess payment

of time Scale Pay.

2. Initially the petitioner was appointed on the post of L.D.C., thereafter two promotions were granted to him. He was also granted time pay scale. At the time of sanction of gratuity amount, an objection was raised to deduct the amount of Rs.32448/- for excess payment.

3. Recently, the Apex Court has dismissed the SLP filed by State of M.P. challenging the order dated 03.02.2017 passed in **W.A. No.95/2017 (State of Madhya Pradesh v/s Madanlal Bardele)** in which the recovery was quashed in view of the law laid down by the Apex Court in case of **State of Punjab v/s Rafiq Masih** and distinguished the judgment passed in case of **Jagdev Singh** (supra). The order passed in **Special Leave Petition (Civil) Diary No(s).34048/2017 (The State of Madhya Pradesh and others v/s Madan Lal Bardele)** is reproduced below: -

"After hearing learned counsel for the parties, we find no ground to interfere with the impugned order passed by the High Court. The Special Leave Petition is, accordingly, dismissed.

Pending interlocutory application(s), if any, stand(s) disposed of."

The order passed by the Division Bench in the case of **State of M.P. v/s Madanlal Bardele (W.A. No.95/2017)** is also reproduced below: -

"Heard on I.A. No.1385/2017, an application for condonation of delay.

There is a delay of 50 days in filing the appeal.

For the reason stated in the application, I.A. is allowed. Delay in filing the appeal is hereby condoned.

Having heard learned counsel for the parties, we are of the considered view that the learned writ court has

correctly decided the question of recovery after following the mandate of the law laid down in the case of **State of Punjab and other Vs. Rafique Masih (white washer)** reported in (2015) 4 SCC 334) and the undertaking given by the petitioner for permitting the recovery will not come in the way and law laid down by the Supreme Court in the case of **High Court of Punjab and Haryana vs. Jagdev Singh, Civil Appeal No.3500/2016**, decided on 29.07.2016 will not apply in the case of the present petitioner as their undertaking does not need the requirement as are contemplated by the Supreme Court in the case of **Jagdev Singh** (Supra). Accordingly, finding no order with the order passed by the learned Writ Court, no ground to interfere in the petition, hence, the petition stands dismissed."

4. The Petitioner is also challenging the action of respondents whereby they have only sanctioned 90 % pension and gratuity on account pendency of dispute before the State Government in respect of caste certificate. The petitioner served entire services and retired from service. He was given promotion also and till retirement no such report has been received that he has used forge caste certificate to secure employment and promotion. Vide annexure P/3, the Divisional Deputy Commissioner, Commercial Tax has only sanctioned 90% of the pension and withheld 10% for want of pendency of enquiry in respect of caste certificate of the petitioner. Even otherwise, since 2016 enquiry has not been concluded till date and no report has been filed, therefore, withholding of 10% pension is unjustified as no departmental or criminal proceedings are pending against the petitioner, hence, his pension can not be withheld under the Pension Rules.

In view of above, **Writ Petition is allowed.** Recovery of amounting

Rs.32448/- is quashed in light of *State of Punjab and Others V. Raifq Masih (2015) 4 SCC 334*. Entire pension be paid to the petitioner.

(VIVEK RUSIA)
JUDGE

Praveen

