

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

WRIT PETITION No. 2847 / 2016

UMESH DALVI

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 1184 / 2016

RAJENDRA GHAYAL

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 2835 / 2016

ARUN BHOPALKAR

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 2877 / 2016

SHARAD KHARGONKAR

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 2885 / 2016

VINAY GODBOLE

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

--- 2 ---

WRIT PETITION No. 2891 / 2016

MUKESH PATHAK

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 2934 / 2016

DEVENDRA CHANDRA SHUKLA

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 2945 / 2016

SMT. KUNDA ZAMINDAR

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 2947 / 2016

SMT. SANDHYA CHAIANYA GHADGE

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3013 / 2016

KALPANA KULKARNI

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3014 / 2016

GAJENDRA SINGH CHOUHAN

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3070 / 2016

PRADEEP SINGH MUKATI

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3071 / 2016

MANOHAR LAL TOLANI

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3072 / 2016

RAJESH BAKSHEE

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3076 / 2016

SATISH SHROTRI

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3103 / 2016

MILIND KATRE

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3137 / 2016

SUNIL KUMAR MATKAR

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3138 / 2016

VINOD KUMAR DALAL

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3139 / 2016

VIKRAM SINGH THAKUR

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3140 / 2016

MANOHAR LAL ARYA

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3141 / 2016

SADASHIV PATHAK

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3167 / 2016

SMT. RAJANI MATHUR

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3169 / 2016

SHIKHAR KUMAR JAIN

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3183 / 2016

KAMLESH KUMAR GUPTA

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3201 / 2016

KAMAL KISHORE SHARMA

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3334 / 2016

SHEKHAR KORANNE

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3524 / 2016

SUDHIR

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3773 / 2016

JAGDISH PRASAD SAINI

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3789 / 2016

YOGENDRA KUMAR VYAS

Vs.

EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 3790 / 2016

RAMESH CHANDRA SHARMA
Vs.
EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 4068 / 2016

MUNNALAL KHARE
Vs.
EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

WRIT PETITION No. 5305 / 2016

SURESH KUMAR JAIN
Vs.
EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

A N D

WRIT PETITION No. 2745 / 2017

MOHAMMAD IQBAL SHAIKH
Vs.
EXECUTIVE DIRECTOR, INDORE REGION,
M.P. PASHCHIM KSHETRA VIDYUT VITRAN CO. LTD.,
INDORE AND ANOTHER

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O R D E R
(31/07/2017)

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being

disposed of by this Court. Facts of Writ Petition No. 2847/2016 are narrated hereunder.

The petitioner before this Court has filed this present writ petition being aggrieved by the order dated 18/3/2016 passed by the respondents by which the respondents have set aside the pay fixation of the petitioner dt. 27/12/1999 and has directed recovery made to the petitioner.

The contention of the petitioner is that the petitioner was appointed on 22/5/1982 as Office Assistant Grade 3, at Indore and on 6/5/1999 an order was passed granting time bound promotion to the petitioner. On 15/12/1999 Petitioner was promoted to the post of Office Assistant Grade 2. The contention of the petitioner is that the aforesaid promotion was granted keeping in view the time bound promotion scheme applicable to Class 3 and Class 4 employees dt. 6/5/1999. Further contention of the petitioner is that he was fixed in the pay scale of Rs.2800-5825.

Another Circular was issued on 19/7/1990 which was again for grant of higher pay scale and the petitioner was

granted higher pay scale on 29/12/2007. It has been further stated that the higher pay scale was granted as per Circular dt. 19/7/1990 and the petitioner was again granted second higher pay scale by order dated 17/7/2008. The petitioner's grievance is that a Notice was issued to the petitioner on 7/5/2015 stating that as to why benefit of higher pay scale should not be withdrawn and the emoluments granted in excess to his entitlement should not be recovered.

The petitioner did file a reply and after hearing the petitioner, the respondents have passed an order dt. 18/3/2016 withdrawing the higher pay scale granted to the petitioner in the year 1999 and the recovery has been ordered.

The contention of the petitioner is that all the three pay scales were granted to him in the light of various policies issued by the Board from time to time and no recovery can be initiated in the light of the judgment delivered by the Hon'ble Supreme Court in the case of State of Punjab and others Vs. Rafiq Masih reported in **2014 AIR SCW 6256**.

On the other hand, a reply has been filed in the matter and it is submitted that the Petitioner was mistakenly granted the benefit of Higher Pay-scale under the TBPS, wherein as per the Scheme an Employee is ought to have been granted the benefit of Re-designation of the Post only and not the benefit of Higher Pay-scale or Revision of pay and accordingly the said erroneously extending the benefit of Higher Pay-scale and fixation of pay was rectified by the Respondents after following principles of natural justice. It is an important fact to consider that in the erstwhile Board and in the present Company there is no provision to grant the benefit of Three Higher Pay-scales to its employees and the contention of the respondent is that due to erroneous interpretation of Circulars, the benefit was extended to the Petitioner and he has obtained Three Higher Pay-scale in his service tenure.

It has been further stated that it is a matter of consideration that an employee can be granted the benefit of Higher Pay-scale or Revised Pay-fixation only when the

relevant policy provides. The Scheme of Time Bound Promotion enforced by the erstwhile Board vide its Circular Dt. 06.05.1999 under which it was principally decided to grant the benefit of the scheme to the 10 posts of Direct recruitment cadre posts of the Board. It was decided that those employees who were already granted the benefit of Higher Pay-scale of next promotional post after completion of 9/18 years of Service would redesignated by prefixing word 'Additional' before their name of next promotional post of which Pay-scale they are already availed under the Higher Pay-scale Scheme Dt. 19.07.1990 of the Board. Copy of the Circular Dt. 19.07.1990 has already submitted by the Petitioner as **Annexure P/5** at Page No.29-48 of the Writ Petition.

It is further contended that an employee under the prevailing Circulars was entitled to get the benefit of Higher Pay-scales (First and Second) of next promotional post, if they were not promoted, after completion of 9/18/25 years of service and to make distinction between the employees

who have got the benefit of Higher Pay-scale it was decided to grant them benefit of TBPS under which they have to be re-designated by suffixing the word ‘Additional’ before the name of Next promotional post, Pay-scale of which they were already receiving.

It has been further contended that as per Circular Dt. 06.05.1999 under the TBPS there is no provision to grant the benefit of Higher Pay-scale/Revision of Pay Fixation, which also gets confirmed by perusal of Clause 2 and 3 of the Circular. Para 2 and 3 reads as under: -

2/ उपरोक्त पदों पद पदस्थ कर्मचारियों को 9 वर्ष की सेवा पूर्ण करने तथा उच्च वेतनमान प्राप्त करने पर उनकी अगली पदोन्नति के पद के नाम के “अतिरिक्त” शब्द जोड़कर नया पदनाम दिया जायेगा। जैसे कि परिचारक श्रेणी—दो को 9 वर्षीय उच्च वेतनमान प्राप्त करने पर “अतिरिक्त परिचारक श्रेणी—एक” का पदनाम दिया जावेगा।

3/ उपरोक्त नये पदनाम प्राप्ति के पश्चात् कर्मचारियों के कार्यों में कोई परिवर्तन नहीं आयेगा। वे वहीं कार्य करते रहेंगे जो वर्तमान में कर रहे हैं। उनके वेतन तथा अन्य भूतों में भी परिवर्तित पदनाम का कोई प्रभाव नहीं पड़ेगा। साथ ही उनकी वरिष्ठता भी अप्रभावित रहेगी।

Respondents have further stated that the aforesaid

decision of redesignation was only taken principally it was further provided under the Clause 8 of the Order that to implement the decision the rules and other conditions will be provided separately. Copy of Circular Dt. 06.05.1999 has already placed on Record by the Petitioner as Annexure

P/1.

It has been further contended that since in view of the Clause 8 of the Circular Dt. 06.05.1999 no order under the TBPS was issued in continuation of the same and upon request of the representative Union a Circular Dt. 30.07.1999 was issued whereby certain directions was provided for issuing the order under the TBPS. The operative para/directions were given from Clause 5 of the Circular Dt. 30.07.1999 as per which it became abundantly clear that those employees, who are already getting the benefit of Higher Pay Scale on completion of 9/18 years of service, the order of Re-designation, by prefixing the word “Additional” before the post for which higher Pay-scale has been granted has to be issued. It was further provided to

ascertain/verify that the employee is already getting and placed in the higher Pay-scale of next promotional post directions has been issued from the Service Book/L.P.C. etc. Copy of Circular Dt. 30.07.1999 has already placed on Record by the Petitioner at Page No.18 (Annexure-P/3) of the Writ compilation.

It has been further contended that the provisions contained in the Clause 5(a), (b) and (c) also makes it clear that under the scheme there was no provision to grant the benefit of Higher Pay Scale or Pay fixation, in fact Clause 5(c) provides for the eventuality wherein those employee whom Higher Pay-scale is has to be given and provides that after granting the benefit of First Higher Pay-scale as per the Board's Circular enforced they have to be re-designated under the TPB Scheme. Clause 7 of the Circular also provides that the Order of Re-designation was not to be issued from retrospective effect, i.e. from the date of granting the benefit of Higher Pay-scale.

It has been further stated that the decision of Time

Bound Promotion Scheme was only principally taken and the same was subject to the Full Board's approval, which is also confirmed by perusal of the Order Dt. 15.12.1999 (**Annexure P/2**), which provides that in event of Full Board not approving the Scheme, the said benefit would be liable for withdrawn and promotion made also would be withdrawn.

It has been further stated here that vide Order Dt. 07.02.2001, it was decided to stop the benefit of TBPS and accordingly authorities were informed, not to grant the benefit of TBPS to the employees, a copy of Order Dt. 07.02.2001 is on record and marked as **Annexure R/1**.

It has been further contended that since it was found that in some cases under the TBPS Scheme, employees were granted the benefit of Higher Pay-scale, wherein, as per the TBP Scheme there was no provision to grant the benefit of Higher Pay-scale therefore a Clarification Order Dt. 14.01.2011 was issued whereby it was clarified that under the provisions of TBPS, employee is not entitled to be fixed

or grant the Higher Pay-scale. Copy of Clarification Order Dt. 14.01.2011 is on record as **Annexure P/8**.

It has been further stated that upon issuance of the Clarification Order Dt. 14.01.2011 the Corporate Selection Committee of the Company was ordered to reconsider and to decide such matters, wherein the employees were granted erroneous benefit of Higher Pay-scale under the TBPS and accordingly adhering to the principle of natural justice a Notice was issued to the Petitioner and he was also provided opportunity of personal hearing and after considering all the aspect of the matter a detailed and exhaustive Order Dt. 18.03.2016 (**Annexure P/11**) was issued, whereby the erroneous benefit of Higher Pay-scale under TBPS granted to the Petitioner was withdrawn and consequential Recovery Order was issued, which is just, proper and legal.

It has been further stated that after passing of Order Dt. 18.03.2016, pay of the Petitioner has been fixed w.e.f. 30.12.2007 in the Pay-scale of 9300-34800+GP 3800 vide Order Dt. 07.04.2016 (**Annexure P/12**) and consequently a

calculation sheet has been prepared by fixing his pay accordingly with respect to payment of excess Salary till 31.03.2016, as per which a total amount of Rs. 2,36,113/- is required to be recovered from the Petitioner.

The respondents have further stated that the petitioner has submitted an Undertaking at the time of Revision of his Pay and Fixation of Pay w.e.f. 01.01.2006 and as per the Undertaking, with respect to Payment of any dues or loss caused due to fixation of pay, the same can be recovered. A copy of Undertaking furnished by the Petitioner time to time, is on record as **Annexure R/2**.

The respondents have further stated that the Petitioner was initially appointed on the Post of Office Assistant Grade-III and his pay was revised time to time as per the prevailing wage Revisions of the Board till passing of the Order Dt. 15.12.1999. Prior to issuance of Order Dt. 15.12.1999 he was never granted the Higher Pay-scale and by the aforesaid order he has been granted Pay-scale of Rs. 2800-70-3440 though his existing pay of Office Assistant

Grade-III was Rs. 2490-60-5075, therefore the benefit of the Time Bound Promotion Scheme (TBPS) could not have been extended to the Petitioner as he was never granted Higher Pay-scale as per the Circular issued on Dt. 19.07.1990 (**Annexure R/1**).

It has been further contended that in the Case of **Chandi Prasad Uniyal And Others Vs. State Of Uttarakhand And Others, reported in [2012] 8 S.C.C. 417**, the Hon'ble Supreme Court of India has been held that any amount paid/received without authority of law can always be recovered barring 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. Thus the recovery of the excess amount paid to the Petitioner cannot be said to be illegal and is well according to the principle laid down by the Hon'ble Supreme Court.

It has been further contended that as per the Impugned Order Dt. 18.03.2016 it is evident that Petitioner has been

granted Higher Pay-scale belonging to Section Officer vide Order Dt. 17.07.2008 (**Annexure P/7**) and he could not have been granted the Higher Pay-scale of Section Officer holding the substantive post of Office Assistant Grade-II and consequently the same has been withdrawn as he has been extended First Higher Pay-scale of Office Assistant Grade-II vide Order Dt. 15.12.1999 (**Annexure P/2**) and Second Higher Pay-scale vide Order Dt. 29.12.2009 (**Annexure P/6**) w.e.f. 28.12.2004 therefore the Order passed on 17.07.2008 has been cancelled as the same was found to be issued on the wrong presumption that the Petitioner is entitled to receive the Pay-scale of Section Officer.

It has been further stated that the explanation issued on Dt. 14.01.2011 clearly provides that under Time Bound Promotion Scheme Higher Pay-scale could not be granted and no 'Fixation of Pay' is required but due to some mistakenly belief and wrong interpretation of the Circular, the Indore Region of the M.P.S.E.B. has been granted

Higher Pay-scale under TBPS though in the other region of erstwhile M.P.S.E.B. had not been provided Higher Pay-scale pursuant to the circular issued on 06.05.1999 and 30.07.1999, therefore when the matter was came-up before the authorities for its consideration it was found that the Higher Pay-scale has been wrongly extended to the Office Assistant Grade-III belonging to Indore Region and accordingly same has been rectified by passing the Impugned Order Dt. 18.03.2016 by granting an opportunity of hearing to each of the employees after issuing a Show-cause Notice and providing a Personal Hearing to the Petitioner to follow the Principles of Natural Justice.

It has been further stated that the respondent-Authorities is having authority to recover the amount which has been found to be excess/overpayment of pay and allowances as per the provision contained in Rule 65 of the M.P. Civil Services (Pension) Rules, 1976 and a recent judgment of the Hon'ble Supreme Court **High Court of Punjab and Haryana Vs. Jagdev Singh** reported in AIR

(2016) SC 3523, wherein the Hon'ble Supreme Court of India has been held that any payment found to have been made in excess would be required to be refunded. It has been further stated that the petitioner furnished an Undertaking while opting for the Revised Pay-scale and he is bound by the Undertaking, therefore, on the basis of above pronouncement of the Hon'ble Supreme Court the amount which was paid excess to the legal entitlement of the Petitioner is rightly being recovered as per law.

Heard learned counsel for the parties at length and perused the record.

Undisputedly, facts of the case reveal that various schemes were issued from time to time for grant of higher pay scale. Employees of the Board and the petitioner in the light of the Circular dt. 6/5/1999 read with Circular dt. 30/7/1999 was granted the benefit of redesignation under the Scheme vide order dated 15/12/1999. It was clearly mentioned in the aforesaid order that the petitioner will continue to work on his original post ie., Office Assistant

Grade 3 keeping in view the provisions of Circular dt. 6/5/1999 and 30/7/1999. The petitioner was not entitled for higher pay scale or revision of pay fixation. In the light of the Scheme the petitioner was never granted higher pay scale before passing of the order dt. 15/12/1999 and he was not entitled to be redesignated as Office Assistant Grade 2 pursuant to Circular dt. 6/5/1999 and 30/7/1999. Not only this, under the time bound promotion scheme, the petitioner was wrongly granted benefit of higher pay scale of the post of Office Asstt. Grade 2 vide order dt. 15/12/1999 whereas he was entitled for the same under the higher pay scale scheme and not under the time bound promotion scheme. Another important aspect of the case is that at the time of issuance of order dt. 15/12/1999 (Annexure P/2) the petitioner was working on the post of Office Assistant Grade 3 and he was not receiving the pay scale of office Assistant Grade 2 and he was not entitled for the pay scale of Office Asstt. Grade 2 and, therefore, wrong extension of benefit of higher pay scale at the time of redesignation was granted

vide order dt. 29/12/2007. In fact, by order dt. 29/12/2007, the petitioner was granted second higher pay scale and not the first higher pay scale. The petitioner was wrongly granted pay scale of Section Officer which was the third higher pay scale and it is a case where an employee who was entitled for two higher pay scales has been granted 3 higher pay scales. The respondents have passed a very exhaustive order clarifying all the issues and the order dt. 18/3/2016 which refers to all the scales and the mistake committed by the Department, reads as under :

कार्यालय कार्यपालक निदेशक, (इंक्षे)
मध्य प्रदेश पश्चिम क्षेत्र विद्युत वितरण कंपनी लि., इन्दौर

कं.153 / कानि / इ.क्षे / रथा—

इन्दौर दिनांक 18.03.16

आदेश

पृष्ठभूमि

मंडल में विभिन्न श्रेणी के कार्मिकों के पदोन्नति में होने वाले विलंब को ध्यान में रखते हुए वर्ष 1999 में मंडल ने समयबद्ध पदोन्नति योजना प्रारंभ कर कार्मिकों को सेवाकाल के आधार पर समयबद्ध पदोन्नति देने का निर्णय लिया था तथा आदेश कं. 01-07/चार/11 दि. 06.05.99 से सिद्धांततः मंडल द्वारा यह तय किया गया था कि 9 वर्ष की सेवा के पूर्ण करने तथा उच्च वेतनमान प्राप्त करने पर उनकी अगली पदोन्नति के पद के नाम के आगे “अतिरिक्त” शब्द जोड़कर नया पदनाम दिया जायेगा। इस नये पदनाम प्राप्ति के पश्चात कर्मचारियों के कार्य में कोई परिवर्तन नहीं आयेगा। वे वही कार्य करते रहेगे जो वर्तमान में कर रहे हैं। उनके वेतन एवं अन्य भूत्तों में भी परिवर्तित पदनाम का कोई प्रभाव नहीं पड़ेगा। साथ ही उनकी वरिष्ठता अप्रभावित रहेगी।

उक्त योजना के प्रावधानों के तहत प्रशिक्षण अवधि मिलाकर 15 वर्ष की सेवा के पश्चात उन्हे अगले पद पदोन्नति दी जावेगी। पदोन्नति के पदनाम के

साथ (उ.कृ.)(उच्चीकृत शब्द का संक्षिप्त रूप) जोड़ा जावेगा। जैसे कि कार्यालय सहायक श्रेणी-तीन को प्रशिक्षण अवधि मिलाकर 15 वर्ष की सेवा पूर्ण करने पर कार्यालय सहायक श्रेणी-दो (उ.कृ.) के पद पर पदोन्नत किया जावेगा, ऐसे पदोन्नत कर्मचारी वही कार्य निष्पादित करते रहेंगे जो वे अपने वर्तमान पद (पदोन्नति के पूर्व) पद पर कर रहे थे, जब तक कि वे पदोन्नति वाले पर की रिक्तता होने पर उस पद पर समायोजित नहीं कर लिये जाते। योजना में यह भी प्रावधान किया गया था कि वे कर्मचारी जिन्होने द्वितीय विकल्प नियम के तहत प्रशिक्षण अवधि मिलाकर 18 वर्ष पूर्ण करने के पश्चात उच्च वेतनमान प्राप्त कर लिया है उनके पदनाम के आगे “अतिरिक्त” शब्द जोड़कर नया पदनाम दिया जावेगा। रिक्त पद पर समायोजित कर लिये गये कार्यालय सहायक श्रेणी-दो को 18 वर्षीय उच्च वेतनमान प्राप्त होने के पश्चात “अतिरिक्त कार्यालय सहायक श्रेणी-एक” का पदनाम दिया जावेगा। इस नये पदनाम पर उन्हे वही कार्य करते रहना पड़ेगा जो कि वे पिछले पद पर कर रहे थे। साथ ही प्रशिक्षण अवधि मिलाकर कुल 23 वर्ष की सेवा अवधि पूर्ण कर चुके कर्मचारियों को द्वितीय पदोन्नति दी जावेगी। ऐसे पदोन्नत कर्मचारी जिनके पदनाम के आगे (उ.कृ.) शब्द लगा हो उन्हें भी 18/25 वर्ष की सेवा के पश्चात द्वितीय विकल्प के अंतर्गत उच्च वेतनमान प्राप्त करने की पात्रता होगी।

स्पष्ट है कि समयबद्ध पदोन्नति योजना में संबंधित कार्मिक को उसके मूल पद पर ही कार्यरत माना गया था तथा उच्चतर वेतनमान प्राप्त होने पर ही पदनाम परिवर्तन किया जाना था एवं पदोन्नत कार्मिकों को उच्च पद के वेतनमान में वेतन निर्धारण की पात्रता भी नहीं थी।

श्री उमेश दलवी, जो तत्कालीन समय में कार्या.सहा.श्रेणी-3 के पद पर कार्यालय क्षेत्रीय भंडार, इन्दौर में पदस्थ थे, को समयबद्ध पदोन्नति योजना के अंतर्गत इस कार्यालय के आदेश कं. कानि/इंक्षे/स्था/567 दि. 15.12.99 से इनका पद उच्चीकृत कर कार्या.सहा.श्रेणी-दो (उ.कृ.) के पद पर पदोन्नति प्रदान की गयी थी। योजना के प्रावधानों के विपरीत त्रुटिवश श्री उमेश दलवी का कार्या.सहा.श्रेणी-दो (उच्चीकृत) के पद पर उनकी ज्याइनिंग दिनांक 27.12.1999 से कार्या.सहा.श्रेणी-दो के वेतनमान 2800-70-3080-90-3440-120-3800-150-4550-175-5600-225-5825 में रु. 5075/- प्रतिमाह पर वेतन निर्धारण कर दिया गया था। श्री उमेश दलवी को बाद में अधीक्षण यंत्री (भंडार), इन्दौर के आदेश कं. 31 दिनांक 24.02.04 से नियमित कार्या.सहा.श्रेणी-दो के पद पर पदोन्नत कर दिये गये थे।

इस कार्यालय के आदेश कं. मुअ/इंक्षे/स्था/492 दिनांक 29.12.07 से कर्मचारी श्री उमेश दलवी को 18 वर्षीय प्रथम विकल्प के अंतर्गत कार्या.सहा.श्रेणी-एक का उच्च वेतनमान दिनांक 28.12.04 से स्वीकृत किया गया था तथा द्वितीय विकल्प के तहत आदेश कं. 01-07/4/पेनल/3951/जबलपुर दि. 17.07.08 द्वारा दिनांक 31.12.2007 से अनुभाग अधिकारी के पद पर उच्च वेतनमान स्वीकृत किया गया था। इस तरह समयबद्ध पदोन्नति योजना के प्रावधानों के विपरित कार्यालय सहा.श्रेणी दो (उ.कृ.) के पद पर वेतन निर्धारण के पश्चात पुनः श्री उमेश दलवी को प्रथम एवं द्वितीय उच्च वेतनमान का लाभ भी प्रदान कर दिया गया था।

श्री उमेश दलवी, सहित अनेक अन्य कार्मिकों के समयबद्ध पदोन्नति के वेतन निर्धारण के प्रकरण संज्ञान में आने पर ऐसे प्रकरणों में मंडल द्वारा पत्र कं. 01-07/पांच/एच/353 दिनांक 14.01.11 से यह स्पष्टीकरण दिया गया था कि समयबद्ध पदोन्नति योजना में किए गए वेतन निर्धारण को संबंधित कार्मिक के संदर्भ में वेतन निर्धारण की तिथि से प्रथम उच्च वेतनमान का लाभ स्वीकृत किया गया माना जाकर कार्यवाही की जावे तथा संबंधित कार्मिक को शेष सेवाकाल में मात्र एक ही उच्च वेतनमान (अर्थात् द्वितीय उच्च वेतनमान) की पात्रता होगी।

मंडल से स्पष्टीकरण प्राप्ति के उपरांत समयबद्ध पदोन्नति के ऐसे समस्त प्रकरण सुनवाई, विचार एवं निर्णय के लिए, 'कार्पोरेट चयन समिति' कार्पोरेट कार्यालय, इन्दौर को संदर्भित किये जाने का निर्णय लिया गया एवं श्री उमेश दलवी, कार्या.सहा.श्रेणी-दो, कार्या.कार्य. संत्री, क्षेत्रीय भंडार, इन्दौर को मुख्य अभियंता कार्यालय, इन्दौर के जावक कं. 4058 दि. 07.05.15 एवं 5339 दि. 11.06.15 से मंडल द्वारा दिए गए स्पष्टीकरण के अनुरूप सूचना पत्र प्रेषित कर अवगत कराया गया कि श्री उमेश दलवी को समयबद्ध पदोन्नति योजना में दिनांक 27.12.1999 से किये गये वेतन निर्धारण को प्रथम उच्च वेतनमान माना जावेगा तथा दिनांक 28.12.04 से स्वीकृत प्रथम उच्च वेतनमान को द्वितीय विकल्प के तहत स्वीकृत उच्च वेतनमान मानते हुए द्वितीय विकल्प के तहत अनुभाग अधिकारी के पद का स्वीकृत उच्च वेतनमान वापस लिया जाकर भुगतान की गई समस्त धनराशि की वसूली की जावेगी, अतः यदि वे कोई आपत्ति प्रस्तुत करना चाहता है तो नोटिस दिनांक 07.05.2015 की प्राप्ति से 7 दिन में मुख्य अभियंता (इंक्षे), इन्दौर को आवश्यक रूप से प्रस्तुत करें तथा आपत्ति प्रस्तुत करने के पश्चात् यदि वे व्यक्तिगत सुनवाई भी चाही है तो कार्पोरेट चयन समिति के समक्ष दि. 19.06.15 को कार्पोरेट कार्यालय इन्दौर में उपस्थित हो।

कार्पोरेट चयन समिति द्वारा आपत्तियों पर सुनवाई, विचार एवं निर्णय :—

नाटिस दिनांक 07.05.15 एवं नोटिस दि. 11.6.15 श्री उमेश दलवी को यथासमय प्राप्त हो गए थे। नोटिस दि. 7.5.15 के प्रत्युत्तर में उनके द्वारा दि. 14.5.15 को निम्नानुसार लिखित आपत्तियां प्रस्तुत की गयी थी :—

- a. मंडल के आदेश कं. 01-07/चार/11, जबलपुर दि. 06.05.99 के तारतम्य में मंडल द्वारा पत्र कं. 01-07/IV/19 दि. 30.07.99 द्वारा स्पष्टीकरण जारी किया गया था, जिसका उल्लेख नोटिस में कही नहीं किया गया है।
- b. मंडल के पत्र कं. 01-07/IV/19 दि. 30.07.99 में वर्णित पैरा क्रमांक (।) के अनुसार 15 वर्ष की सेवा पूर्ण करने वाले कर्मचारियों के लिए निकाले जाने वाले आदेश का प्रारूप 'बी' भी संलग्न है, जिसके अनुसार पदोन्नति प्रदान की गयी, जिसमें कार्या.सहा.श्रेणी-दो के पर का वेतनमान स्पष्ट रूप से अंकित किया गया था। वेतनमान अंकित करने का आशय ही यह था कि अंकित वेतनमान में पदोन्नति पश्चात् कार्मिक का वेतन निर्धारण किया जाए। यदि वेतन निर्धारण नहीं किया जाना था तो

पदोन्नति का औचित्य क्या था ?

c. वे मंडल के परिपत्र कं. 01-07/IV/19 दि. 30.07.99 के पैरा क्रमांक (।) की श्रेणी में आती है, इस कारण उन्हें कार्या.सहा.श्रेणी-दो के पद पर पदोन्नत कर वेतनमान का निर्धारण किया गया था जो कि पूर्ववर्ती मंडल के आदेश कं. 01-07/IV/19 दि. 30.07.99 के अनुसार नियमानुकूल है।

d. दिए गए नोटिस दिनांक 07.05.15 के पैरा कं. 02 में पूर्ववर्ती मंडल के आदेश कं. 01-07/IV/11 दि. 06.05.99 की कंडिका 2 एवं 3 का उल्लेख किया गया है, किन्तु पूर्ववर्ती मंडल द्वारा पत्र कं. 01-07/IV/19 दि. 30.07.99 के माध्यम से जारी स्पष्टीकरण का उल्लेख नहीं है।

e. मंडल के पत्र दिनांक 30.07.99 के पैरा कं. (।।।) में उल्लेख अनुसार वे कर्मचारी जिन्हें 9/18 वर्ष की सेवा पूर्ण करने पर उच्च वेतनमान प्राप्त हो चुका है उन्हें पदनाम के आगे 'अतिरिक्त' शब्द जोड़ा जाना है। उक्त स्पष्टीकरण दिनांक तक एक भी उच्च वेतनमान प्राप्त नहीं हुआ था, इस कारण पैरा कं. (।।।) मुझ पर लागू नहीं होते हैं।

f. नोटिस दिनांक 07.05.15 के पैरा 3 में पूर्ववर्ती मंडल द्वारा जारी पत्र कं. 01-07/पांच/एच/353 दि. 14.01.11 के स्पष्टीकरण का उल्लेख किया गया है जो मुझ पर लागू नहीं होता है।

g. मंडल के पत्र कं. 01-07/IV/19 दि. 30.07.99 में दर्शायी गयी पात्रता अनुसार कार्यालय सहा.श्रेणी-दो के पद पर पदोन्नति पदान कर पत्र में दर्शाये अनुसार वेतनमान दिया गया है जो नियमानुकूल है एवं इसके पश्चात् पूर्ववर्ती मंडल के आदेश कं. 01-13/5586/33 दि. 30.08.07 एवं 01-13/5586/5 दि. 29.02.08 के तारतम्य में पदोन्नति अस्वीकार करने वाले कार्मिकों को दिनांक 29.09.03 से उच्च वेतनमान के प्रथम विकल्प प्राप्त करने का लाभ प्रदान किया गया एवं इसी आधार पर मेरे द्वारा 18 वर्ष के प्रथम उच्च वेतनमान के विकल्प का आवेदन प्रस्तुत किया गया, जिसे मुख्य अभियंता कार्यालय के आदेश द्वारा लेखा प्रशिक्षण की परीक्षा उत्तीर्ण करने की अनिवार्य शर्त के साथ स्वीकार किया गया। तत्पश्चात् 25 वर्ष के द्वितीय विकल्प का उच्च वेतनमान का आवेदन प्रस्तुत किया गया जिसे मंडल के आदेश द्वारा स्वीकृत कर द्वितीय उच्च वेतनमान प्रदान किया गया उसमें कोई त्रुटि न होते हुए नियमानुसार है।

h. मुझे प्रदान की गयी पदोन्नति, प्रथम एवं द्वितीय उच्च वेतनमान नियमानुसार एवं नियमानुकूल है अतः दिए गए नोटिस को निरस्त किया जाए। श्री उमेश दलवी दिनांक 19.06.15 को कार्पोरेट चयन समिति के समक्ष भी व्यक्तिगत रूप से उपस्थित हुए थे, जहां उनके द्वारा लिखित में दर्ज करायी गयी आपत्तियों के संबंध में उनके पक्ष को सुना गया। चूंकि श्री उमेश दलवी सहित अन्य प्रभावित होने वाले कार्मिकों द्वारा उठायी गयी आपत्तियां पूर्ववर्ती मंडल के आदेश/परिपत्रों में निहित प्रावधानों की व्याख्या से संबंधित थी अतः पूर्ववर्ती मंडल के आदेशों/ परिपत्रों के प्रकाश में प्रभावित कार्मिकों

द्वारा उठायी गयी आपत्तियों का सूक्ष्मतापूर्वक अवलोकन कर अपना अभिमत देने हेतु कार्पोरेट कार्यालय, इन्दौर के आदेश कं. 427 दिनांक 10.08.15 से एक समीक्षा समिति का गठन किया गया था जिसके द्वारा दी गई रिपोर्ट कार्पोरेट चयन समिति के समक्ष प्रस्तुत की गयी थी। श्री उमेश दलवी द्वारा प्रस्तुत लिखित आपत्तियों के अवलोकन, उनकी व्यक्तिगत सुनवाई एवं समीक्षा समिति द्वारा प्रस्तुत अभिमत पर विचारोपरांत कार्पोरेट चयन समिति के निष्कर्ष निम्नानुसार है :—

1. पूर्ववर्ती मंडल द्वारा जारी परिपत्र कं. 01-07/IV/19 दि. 30.07.99 से परिपत्र कं. 01-07/IV/19 दि. 06.05.99 के नियम एवं शर्तों को विस्तृत रूप से उल्लेखित किया गया है तथा इस परिपत्र में ऐसा कहीं भी उल्लेख नहीं था कि समयबद्ध पदोन्नति देने के उपरांत वेतन निर्धारण किया जाना है। इस परिपत्र के साथ संलग्न प्रारूपों में वेतनमान उल्लेख का आशय भी यह नहीं था कि इस वेतनमान पर वेतन निर्धारण कर दिया जावे। तत्समय इन परिपत्रों के पालन में मैदानी क्षेत्रों से जारी किए जाने वाले आदेशों में एकरूपता के आशय से प्रारूप जोड़े गए थे। परिपत्र में ऐसा कुछ भी लेख नहीं है जो मूल परिपत्र कं. 01-07/IV/11 दि. 06.05.99 के प्रावधानों से विरोधाभासी हो।

2. मूल परिपत्र दिनांक 06.05.99 के संबंध में इस आदेश की पृष्ठभूमि में उल्लेख किया जा चुका है जिससे स्पष्ट है कि उच्च वेतनमान प्राप्त कर्मचारियों को ही समयबद्ध पदोन्नति दी जाना थी तथा किसी प्रकार का वेतन निर्धारण नहीं किया जाना था। परिपत्र दि. 06.05.99 एवं दि. 30.07.99 के क्रियांवयन में मैदानी क्षेत्रों की कठिनाई एवं मैदानी क्षेत्रों द्वारा त्रुटिपूर्ण रूप से वेतन निर्धारण कर दिए जाने के कारण मंडल द्वारा स्पष्टीकरण कं. 353 दि. 14.01.11 जारी कर यह बताया गया था कि समयबद्ध पदोन्नति योजना के तहत पदोन्नत कार्मिकों को अपने मूल पद पर ही कार्यरत माना जाता है अतः जिन प्रकरणों में वेतन निर्धारण कर दिया गया है उसे प्रथम उच्च वेतनमान माना जाना एवं संबंधित कार्मिक को शेष सेवा काल में मात्र एक ही उच्च वेतनमान (अर्थात् द्वितीय उच्च वेतनमान) की पात्रता होना निर्देशित किया गया था। इन निर्देशों के पालन में मंडल द्वारा भी पूर्व में अधिकारियों/कर्मचारियों के प्रथम विकल्प के रूप में स्वीकृत उच्च वेतनमान के रूप में स्वीकृत उच्च वेतनमान माने जाने संबंधित संशोधित आदेश कं. 01-07/चार/791 दि. 03.02.11 जारी किया गया है।

उपरोक्त तथ्यों के दृष्टिगत कार्पोरेट चयन समिति द्वारा यह निर्णय लिया गया है कि श्री उमेश दलवी को जारी किए गए नोटिस पूर्णतः नियमानुकूल है तथा जारी किए गए नोटिसों के अनुरूप कार्यवाही किया जाना न्यायोचित होगा।

अतः जैसा कि प्रस्तावित किया गया था श्री उमेश दलवी कि समयबद्ध पदोन्नति योजना के अंतर्गत कार्यालय श्रेणी दो (उ.कृ.) के पद पर की गयी पदोन्नति के उपरांत पदभार ग्रहण दि. 27.12.1999 से किए गए वेतन निर्धारण को एतद द्वारा निरस्त करते हुए इसी दिनांक से प्रथम विकल्प के तहत स्वीकृत उच्च वेतनमान माना जाना आदेशित किया जाता है तथा प्रथम विकल्प

के तहत इस कार्यालय के आदेश कं. मुआ/इंक्षे/स्था/492 दिनांक 29.12.07 द्वारा दिनांक 28.12.04 से स्वीकृत कार्या.सहा.श्रेणी—एक पद के स्वीकृत उच्च वेतनमान को द्वितीय विकल्प के तहत उच्च वेतनमान माना जाना आदेशित किया जाता है। मंडल आदेश कं. 01-07/4/पेनल/3951/जबलपुर दिनांक 17.07.08 द्वारा दिनांक 31.12.2007 से अनुभाग अधिकारी के पद के स्वीकृत उच्च वेतनमान को एतद द्वारा निरस्त करते हुए इस उच्च वेतनमान के फलस्वरूप दिनांक 31.12.2007 से दिये गये समस्त वित्तीय लाभों की वसूली श्री उमेश दलवी के मासिक वेतन से नेट वेतन का 15 प्रतिशत प्रतिमाह की दर से संबंधित कार्यालय द्वारा किया जाना ओदिशित किया जाता है।

कार्यपालक निदेशक (इंक्षे.)

The aforesaid order has been passed in consonance with the various schemes framed from time to time and as the petitioner was granted one extra higher pay scale, the same has been withdrawn that too after granting an opportunity of hearing to the petitioner and after taking into account all the grounds raised by the petitioner.

Hon'ble the apex Court in the case of State of Punjab and others Vs. Rafiq Masih (supra) in paragraph 5 to 8 has held as under :

5. In *Shyam Babu Verma's case (Supra)*, this Court while observing that the petitioners-therein were not entitled to the higher pay scales, had come to the conclusion that since the amount has already been paid to the petitioner, for no fault of theirs, the said amount shall not be recovered by the respondent-nation of India. The observations made by this Court in the said case are as under: "Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale

is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. (emphasis supplied)."

6. In *Sahib Ram Verma's* case (*Supra*), this Court once again held that although the appellant therein did not possess the required educational qualification, yet the Principal granting him the relaxation, had paid his salary on the revised pay scale. This Court further observed that this was not on account of misrepresentation made by the appellant but by a mistake committed by the Principal. In a fact situation of that nature, the Court was pleased to observe that the amount already paid to the appellant need not be recovered. In the words of the Court:

"Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which appellant cannot be held to be fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

7. In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant-therein were in exercise of its extra-ordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice.

8. In *Chandi Prasad Uniyal's* case (*Supra*), a specific issue was raised and canvassed. The issue was whether the appellant-therein can retain the amount received on the basis of irregular/wrong pay fixation in the absence of any misrepresentation or fraud on his part. The Court after taking into consideration the various decisions of this Court had come to the conclusion that even if by mistake of the employer the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the excess payment so made could be recovered. While holding so this Court observed at paragraphs 14 and 16 as under:

"14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due

to various reason like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring 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.

16. The appellant in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However we order that excess payment made be recovered from the appellants salary in 12 equal monthly instalments.”

This Court is of the considered opinion that the order passed by the respondents does not warrant any interference. However, the fact remains that the respondents have not filed any document to demonstrate before this Court that the petitioner has given an undertaking in the matter of pay fixation while higher pay scales were granted under the time bound upgradation Schemes. The petitioner and other identically placed persons are retired employees who have retired from Class 3 posts and the recovery is bound to cause undue hardship to the retired employees.

Resultantly, in the light of the judgment delivered by

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the Hon'ble Apex Court in the case of State of Punjab and others Vs. Rafiq Masih (supra), recovery ordered by the respondents is hereby quashed. However, pay fixation is upheld. The petitioner shall be entitled for all terminal dues and other dues keeping in view the order dt. 18/3/2016. The present Writ Petition stands partly allowed.

A copy of this order be placed in the record of the connected Writ Petitions.

(S. C. SHARMA)
J U D G E

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