

THE HIGH COURT OF MADHYA PRADESH

W.P. No. 6266/2017

1 *Dr. Ashok Kumar Verma Vs. State of M.P. & others.*

Indore, dated : 31.01.2018

Shri Ranjeet Sen, learned counsel for the petitioner.

Ms. Bharti Lakkad, learned counsel for the respondents State.

ORDER

The petitioner has filed the present petition being aggrieved by the action of the respondents by which they have recovered the amount from the retiral dues after the retirement. After the retirement, the District Pension Officer took objection that some excess amount has been paid to the petitioner in respect of four tier pay scale system.

The petitioner was initially appointed on the post of Medical Officer/Assistant Surgeon and retired after attaining the age of superannuation. According to the petitioner as per seniority, he was entitled for superior time scale which was granted very late by the respondents.

While issuing notice in this writ petition, the recovery against the petitioner has been stayed.

The respondents filed the return in another similar petition by submitting that the State Government has sanctioned four tier pay scale to the Specialist/ Medical Officer w.e.f 26.08.2008. The said benefit was given to the petitioner. Thereafter, the petitioner was granted the benefit of senior pay scale and selection pay scale along with other

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Medical officers but erroneously, he was not granted the benefit with effect from his entitlement which ought to have been granted to him w.e.f 26.08.2008. The said mistake came to the knowledge of respondents at the time of fixation of pension and other retiral dues, therefore, in light of the judgment passed in the case of **Chandi Prasad Uniyal Vs. State of Uttrakhand : (2012) 8 SCC 417**, recovery is permissible.

Counsel for the parties jointly submits that the number of writ petitions were filed before the Principal Bench at Jabalpur and all the petitions have been allowed vide order dated 20.12.2017 and recovery against all the Specialists, Medical Officers and Surgeons have been quashed.

Relevant para of the order dated 20.12.2017, passed in W.P.No.17846/2012 is reproduced below:

"14. As per the discussion made hereinabove the order impugned/circular dated 30.5.2012 is hereby quashed. On account of quashing the said circular, the consequential orders dated 1.6.2012 and 25.6.2012 directing recovery and the adjustment of the amount of grade scale of pay with the arrears of 6th Pay Commission also stand quashed. The State Government by issuing notifications dated 23.7.2013 and order dated 14.1.2016 made an attempt to

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clarify the Rules inter alia explaining the applicability of the benefit of four tier scale of pay but as discussed above the Rules are self explanatory and as per the discussion made hereinabove the benefit shall be given as per circular of the Government dated 26.8.2008 applying the substituted Schedule I of the new Rules. Therefore, the clarification issued by the Government and the direction of recovery with interest is contrary to the spirit of the Rules.

15. In view of the foregoing discussion, all these petitions succeed and are hereby allowed. Orders dated 30.5.2012, 1.6.2012, 25.6.2012, 23.7.2013 and 14.1.2016 are hereby quashed. It is hereby directed that the benefit of four tier grade scale of pay would be available to the Specialists, the Medical Officers, the Dental Specialists and the Dental Surgeons as per substituted Schedule I of the new Rules on completion of six years of their service in the respective grade scale of pay from the date of their initial appointment on recommendation of the Screening Committee. On account of quashing the orders dated 30.5.2012 and consequential orders dated 1.6.2012, 25.6.2012, 23.7.2013 and 14.1.2016 of recovery and adjustment of the amount of the grade scale of pay with the arrears of 6th Pay Commission are also quashed.

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16. Consequent upon quashing the aforesaid orders, it is hereby directed that the Government shall extend the benefit of respective grade scale of pay to the petitioners as per their entitlement and shall finalize the same as per the substituted Schedule I of the new Rules in view of the discussion made hereinabove. The said exercise must be completed within a period of four months reviving the order dated 7.7.2009. Accordingly the arrears of the grade scale of pay be paid to them within a period of two months and shall not be adjusted in the arrears of 6th Pay Commission. In case the recovery is already made, it be reimbursed. Let this entire exercise be complete within six months from today otherwise the petitioners would be entitled to claim interest on the amount of arrears as per the prevalent Bank rate. In the facts and circumstances of the case, the parties are directed to bear their own costs."

In view of the above, present petition is also **allowed.** Order dated 20.12.2017 passed in W.P. No.17846/12 shall apply *mutatis mutandis* in this petition also.

(VIVEK RUSIA)
JUDGE

Alok/-

Alok
Gargav

Digitally signed by Alok Gargav
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