



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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 10th OF DECEMBER, 2024

WRIT PETITION No. 28689 of 2022

GORI SAXENA

Versus

***THE STATE OF MADHYA PRADESH DIRECTORATE AYUSH AND
OTHERS***

Appearance:

Shri Sumeet Samvatsar - Advocate for the petitioner.

Shri Bhuwan Deshmukh , GA on behalf of Advocate General.

ORDER

1] This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

“7.1 It is therefore most respectfully prayed that this petition be allowed with cost: and an appropriate writ, order or directions be issued against the Respondents for quashing Order No. Stha/22/518-21 dated 22nd February, 2022 (Annexure-P/6);

7.2. It is further prayed that; appropriate writ, order, or directions be issued against the Respondents for quashing Order Stha/2022/2319-20 dated 8th August 2022 (Annexure P/10);

7.3. It is further prayed that writ, order, or directions be issued against the Respondents for quashing reply dated 7th September, 2022 (Annexure-P/12);

7.4. It is further prayed that, appropriate writ, order, or directions be issued against the Respondents for quashing the illegal recovery initiated by the Respondents against the Petitioner;

7.5. That, this Hon'ble Court may further please to



*grant any other relief, if
'deems fit in present facts and circumstances''*

2] The petitioner is aggrieved by the order dated 22.2.2022, (Annexure P-6) and the order dated 8.8.2022 (Annexure P-10). Vide the order dated 22.2.2022 a recovery to the tune of Rs.2,51,038/- has been made against the petitioner on the ground that she has been wrongly given the increment in pay on account of the circular dated 19.6.2013 (Annexure P-5) which relates to sterilization (Nasbandi), and which according to the respondents has not been properly applied. Subsequently on 8.8.2022 (Annexure P-10), the respondent no.2 has also issued a demand letter of Rs.2,51,038/- on the same ground.

3] In brief facts of the case are that the petitioner is posted as Staff Nurse at District Ujjain, and she was granted advance increment on the basis of the circular dated 25.7.2001 which, with a view to promote the family planning programme, and to encourage the government servant to opt for vasectomy/tubectomy (*Nasbandi*), provides for a payment of an advance increment. The order in respect of advance increment was passed on 19.6.2013(Annexure P-5), however, after a period of around 13 years, i.e., on 22.2.2022, the impugned notice has been issued to the petitioner, and a recovery to the tune of Rs.2,51,038/- has been made against her without affording any opportunity of hearing. Another demand notice by way of order dated 8/8/2022 has also been issued to her wherein it is



mentioned that since the petitioner has already operated herself prior to 24.2.2010, she is not entitled to the benefit of the circular as provided to her on 19.6.2013.

4] Counsel for the petitioner has drawn attention of this Court to circular dated 25.7.2022 (Annexure P-2) which clearly provides that to promote the family planning the Government is providing advance increment to the person who agrees for vesctomy/tubectomy (Nasbandi). It is further submitted that even assuming that the petitioner was granted advance increment on account of wrong interpretation of the aforesaid circular, the amount cannot be recovered after a period of 13 years as there is no suppression of facts by the petitioner.

5] In support of his submission, counsel for the petitioner has also drawn the attention of this Court to the decision rendered by the Supreme Court in the case of *Thomas Daniel Vs. State of Kerala and others* reported as **2022 SCC online SC 536**.

6] Counsel for the respondent/State on the other hand has opposed the prayer, and it is submitted that it was a precondition in the aforesaid circular that such person, who has got himself/herself operated upon should be a public servant at the time operation, and has also relied upon circular dated 14.9.2006 (Annexure R-1).

7] Heard. Having considered the rival submissions, and on perusal of the documents filed on record it is found that so far as



the order dated 19.6.2013, on the basis of which the petitioner has been granted the benefit of advance increment is concern the same reads as under:-

क्रं/स्थापना/13/1481

उज्जैन दिनांक 19.6.13

आदेश

सामान्य प्रशासन विभाग आदेश क्रं. स्थापना/3/9/2001/1/1/3 दिनांक 25/07/2001/ 7-एफ-01 द्वारा दिये गये निर्देशानुसार श्रीमती गौरी शंकर सक्सेना स्टाफ नर्स पति श्री इन्द्रकुमार सक्सेना द्वारा दो जीवित बच्चों पर दिनांक 10/12/2008 को नसबंदी कराने से एक वेतन वृद्धि सेवा में उपस्थिति दिनांक 24/02/2010 से स्वीकृत कर वेतन निम्नलिखित अनुसार नियमित किया जाता है।

दिनांक 24/02/2010

पे 7440 + 2400 = 9840

से जीवित बच्चों नसबंदी एवं वेतन वृद्धि

पे 7740 + 2400 = 10140

कार्यालय आदेश क्रं. 3034/01.06.2011

8640 + 2400 = 11040

द्वारा -

डिप्लोमाधारी होने से 24.02.2010 से वेतन

वृद्धि

300+300+300 = 900

01.07.2011-8950+2400 = 11380

01.07.2012-9330+2400 =11730

8] Whereas the circular dated 14.9.2006 (Annexure R-1) on which the respondents have relied upon the same reads as under reads as under:-

मध्य प्रदेश शासन

सामान्य प्रशासन विभाग

मंत्रालय, वल्लभ भवन, भोपाल

क्रमांक सी-3/4/2004/3/एक,

भोपाल, दिनांक 14.9.2006



प्रति,

शासन के समस्त विभाग,
अध्यक्ष, राजस्व मण्डल, म.प्र. ग्वालियर,
समस्त संभागायुक्त,
समस्त विभागाध्यक्ष,
समस्त कलेक्टर,
समस्त मुख्य कार्यपालन अधिकारी, जिला पंचायत,
मध्य प्रदेश।

विषय:- शासकीय सेवकों द्वारा स्वयं या पति/पत्नि का परिवार कल्याण कार्यक्रम के अंतर्गत नसबन्दी ऑपरेशन कराने पर अग्रिम वेतन वृद्धियों बाबत।

राज्य शासन द्वारा परिवार कल्याण कार्यक्रम को प्रोत्साहित करने की दृष्टि से नसबन्दी/ऑपरेशन कराने वाले शासकीय सेवकों को अग्रिम वेतनवृद्धि स्वीकृत करने संबंधी योजना दिनांक 15.01.1979 से लागू की गई थी। परिपत्र क्रमांक 46/91/1/3/79 दिनांक 29.01.79 में **शासकीय सेवकों द्वारा** स्वयं अथवा पति/पत्नि का दो जीवित बच्चों के बाद नसबन्दी ऑपरेशन कराने पर दो अग्रिम वेतनवृद्धियां तथा तीन जीवित बच्चों के बाद नसबन्दी ऑपरेशन कराने पर दो अग्रिम वेतनवृद्धियां तथा तीन जीवित बच्चों के बाद नसबन्दी ऑपरेशन कराने पर एक वेतनवृद्धि का प्रावधान किया गया था। तत्पश्चात् उपरोक्त नीति में संशोधन करते हुए परिपत्र क्रमांक सी-3/9/2001/1/3 दिनांक 7.8.2001 द्वारा एक जीवित बच्चे के बाद नसबन्दी/ऑपरेशन कराने पर दो अग्रिम वेतनवृद्धिया तथा दो जीवित बच्चों के बाद नसबन्दी ऑपरेशन कराने पर एक वेतनवृद्धि देने का प्रावधान किया गया है।

2/ शासन की नीति के अंतर्गत उपरोक्त स्वीकृत अग्रिम वेतनवृद्धि को जोड़कर शासकीय सेवक का वेतन निर्धारित किया जाता है, जो भविष्य में शासकीय सेवक की पदोन्नति होने अथवा वेतनमान पुनरीक्षित होने पर यह वेतनवृद्धि उसी में समाहित हो जाती है।

3/ शासकीय सेवकों द्वारा इस संबंध में विभिन्न न्यायालयों में याचिकाएं दायर की हैं। कुछ प्रकरणों में मा. न्यायालय द्वारा यह अभिनिर्धारित किया है कि स्वीकृत अग्रिम वेतनवृद्धियां संबंधित शासकीय सेवक का "व्यक्तिगत वेतन" माना जाता चाहिए।

4/ राज्य शासन द्वारा वर्तमान व्यवस्था परिपत्र क्रमांक सी-3/9/2001/1/3 दिनांक 07.08.2001 द्वारा निर्धारित को यथावत् रखते हुए निर्णय लिया गया है कि जिन शासकीय सेवकों द्वारा पूर्व में परिवार कल्याण कार्यक्रम शासन के उक्त निर्देशानुसार अपनाया गया है, उनमें से केवल उन्हीं शासकीय सेवकों की वेतनवृद्धि व्यक्तिगत वेतन मान्य की जावे, जिन्हें मा. न्यायालयों से आदेश प्राप्त हो गए हैं एवं अपील की समय-सीमा निकल गई है। जिन प्रकरणों में अपील की समय-सीमा है, उनमें संबंधित विभाग विधि विभाग से कर



उपरोक्त विषयक, न्यायालयीन आदेश के विरुद्ध अपील/याचिका दायर करने कार्यवाही तत्काल की जाए। शेष शासकीय सेवकों को उक्त वेतनवृद्धि व्यक्तिगत वेतन मान्य नहीं किया जावे।

9] The demand notice which has been raised by the respondents on 8.8.2022, reads as under.

प्रति,

श्रीमती गौरी सक्सेना

(स्टॉफनर्स),

शासकीय स्वशासी आयुर्वेद चिकित्सालय

चिमनगंज मण्डी, उज्जैन म0प्र0

विषय:- गणना पत्रक के संबंध में।

उपरोक्त विषय में लेख है कि आपको इस कार्यालय के आदेश क्रमांक/ स् था./1483-84, उज्जैन दिनांक 19.06.2013 द्वारा पुरुष नसंबंदी के लिये वेतनवृद्धि नियुक्ति दिनांक से प्रदाय की गई थी। जबकि आपके द्वारा अपनी नियुक्ति दिनांक 24.02.2010 के पूर्व में अपने नसंबंदी करवायी गई थी। इस हेतु आपकी सेवापुस्तिका में संयुक्त संचालक कोष एवं लेखा उज्जैन द्वारा अवलोकन करने के पश्चात् ली गई आपत्ति के फलस्वरूप अधिक भुगतान की वसूली का गणना पत्रक अनुसार 2,51,038/- रुपये (दो लाख इक्कावन हजार अड़तीस रुपये) आप बैंक चालान अथवा वेतन कटौती के माध्य से जमा करावें ताकि आपकी सेवापुस्तिका में ली गई आपत्ति का निराकरण किया जा सके।

(.....)

प्रधानाचार्य

शासकीय धन्वन्तरि आयुर्वेद चिकित्सा महाविद्यालय

उज्जैन(म.प्र.)

10] On perusal of the aforesaid circular dated 14.09.2006, and the subsequent demand raised by the respondents, this Court is of the considered opinion that the aforesaid circular has been issued by the State Government only to promote its family planning programme, and in such circumstances, if a person who has



already taken steps for the family planning by resorting to Nasbandi prior to his appointment, and is subsequently appointed in the government service, cannot be said not to promote the the government's family planning programme.

11] This court is of the considered opinion that if a public spirited person, regardless of the fact whether he is a government servant or not, unselfishly gets himself/herself operated upon for family planning, such person cannot be deprived of the benefit of the aforesaid circular which provides for advance increments to government servants opting for family planning. This is for the reason that the ultimate object of the government is to control the birth rate and the explosion of population by resorting to family planning only, and if a person has contributed to the same cause while he/she was not in government service and subsequently joins the same, he/she is also entitled to the benefit of his/her benevolent act of helping the government in the retiral clause.

12] Also taking note of the fact that the respondents have effected the recovery against the petitioner on the ground that the advance increment has wrongly been given to her by interpreting the circular in a different manner after a period of 13 years. In such circumstances also, the case of the petitioner would also be covered by the decision rendered by the supreme Court in the case of **Thomas Daniel (supra)** para 9 of the same reads as under:-



“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

(emphasis supplied)

13] In view of the facts and circumstances of the case, this Court has no hesitation to come to a conclusion that the impugned orders dated 22.2.2022 and 8.8.2022 cannot be sustained in the eyes of the law, deserve to be and are hereby quashed.

14] Accordingly, the petition stands ***allowed and disposed of.***

(SUBODH ABHYANKAR)
JUDGE