



IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 24<sup>th</sup> OF FEBRUARY, 2025

WRIT APPEAL No. 404 of 2025

*THE STATE OF MADHYA PRADESH THROUGH PUBLIC HEALTH  
ENGINEERING AND OTHERS*

*Versus*

*BALWANT SINGH MANDLOI*

**Appearance:**

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*Shri Anand Soni, learned Additional Advocate General for the appellants / State.*

*Shri P. Narahari, Principal Secretary (through V.C.) & Shri D.S. Patel, Executive Engineer, Public Health Engineering Department are present in person.*

*None for the respondent / Writ Petitioner.*

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**O R D E R**

***Per : Justice Vivek Rusia***

The appellants / State of Madhya Pradesh & Others have filed the present Writ Appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005 being aggrieved by the order dated 29.11.2022 passed in Writ Petition No.26705 of 2022, whereby the recovery of an amount of Rs.94,056/- has been quashed.

02. This appeal is barred by 711 days, hence, an application for condonation delay (I.A. No.1289/2025) is also filed along with the writ appeal. The appellants have tried to explain the delay by giving certain dates, on which communications were made to seek permission to



challenge the impugned order passed by the Writ Court.

03. We are not inclined to condone the delay and entertain this writ appeal on merit as well on the following reasons:-

3.1. *Firstly* the respondent / writ petitioner was appointed as a Skilled Worker in the year 1987 in the Work Charged & Contingency Paid Establishment. In the year 2008, the Departmental Promotion Committee considered and recommended his name for a grant of the higher pay scale and belief was given to him.

3.2. In the year 2015, the Director, Treasury & Account raised an objection that the higher pay scale was wrongly granted to the writ petitioner, therefore, vide order dated 03.11.2015, recovery was ordered. The writ petitioner retired from service on 16.01.2017 and from his retiral dues an amount of Rs.94,056/- was recovered.

3.3. Although the writ petitioner could not approach the High Court at that relevant point of time challenging the impugned order, but similarly placed Skilled Helpers did approach this Court by way of W.P. No.8741 of 2015 and others. By a detailed and speaking order dated 31.08.2017, all the writ petitions were allowed with a specific finding that the petitioners therein were rightly granted the benefit of a higher pay scale in light of the executive instruction dated 31.03.1984 after completion of five & ten years of service.

3.4. Being aggrieved by the aforesaid order, the State Government filed 27 writ appeals and vide common order dated 27.09.2018 all the writ appeals were dismissed.

3.5. The issue in respect of the grant of benefit of higher pay scale and recovery had been put to rest way back in the year 2017 – 18. The writ petitioner indeed approached this Court with delay, but since the entitlement of the petitioner is not in dispute, hence, the State has no



ground in writ appeal to challenge the impugned order by way of appeal. In cases of similarly placed employees, the order passed by this Court in the writ petition had attained finality long back which was not challenged by the State by way of SLP, therefore, the Writ Court has rightly allowed the writ petition.

3.6. *Secondly*, with the consent of the Government Advocate appearing for the State, the writ petition was allowed on the very first date of hearing. At that time, the Government Advocate did not seek any time to file reply to the writ petition. Hence, the State has no right to file the writ appeal before this Court.

3.7. *Thirdly*, the writ petitioner was retired as a Class - IV employee, therefore, the recovery of Rs.94,056/- at the time of retirement could not have been made in view of the law laid down by the Apex Court in the case of *State of Punjab & Others v/s Rafiq Masih (White Washer) reported in (2015) 4 SCC 334* as well as the judgment delivered by the Full Bench of this Court in the case of *The State of Madhya Pradesh & Others v/s Jagdish Prasad Singh (Writ Appeal No.815 of 2017)*. On this ground also, this writ appeal ought not to have been filed by the State Government.

04. On 17.02.2025, we directed the Government Advocate to call the OIC along with a note-sheet as to who gave the permission / opinion / approval for filing this writ appeal before the Division Bench. We are shocked and surprised that neither the office of the Advocate General nor the Law Department granted any approval for filing this writ appeal, despite that the Chief Engineer, PHE, Bhopal vide order dated 16.12.2024 appointed the OIC and directed him to file this writ appeal. No reasons have been assigned as to why the Chief Engineer thought that this matter is fit for filing a writ appeal before this Court. There is



no explanation as to how this writ appeal can be entertained on merit that too with an unexplained delay of 711 days. The present writ appeal has been filed by wasting the public money only and to waste the valuable time of this Court.

05. We have been told that only 16 Class – IV employees in the division of PHE were held entitled to the benefit of upgradation by the judgment passed in the year 2017 – 18.

06. Today Principal Secretary, PHE is present in person through Video Conferencing and we tried to understand from him as to why the opinion has been given by the Chief Engineer to file this writ appeal. According to him, the matter is being placed before the Cabinet for approval for the creation of supernumerary posts and only benefits of upgradation can be given to the writ petitioner. This explanation is further shocking to us that in respect of the refund of Rs.94,056/- to Class - IV employees, the Government is going to place this matter before the Cabinet, especially when the impugned action had already been set aside by this Court in the bunch of writ petitions as well as in writ appeals in respect of similarly placed employees way back in the year 2017 – 18.

07. We have come across various cases, in which Class – IV employees of the various departments of the State of Madhya Pradesh are affected by the decision taken by the superior officers. Most of the cases are of the nature of withdrawal of the pay scale upgradation, recovery at the time of retirement and non-grant of similar benefits to remaining employees and delay in promotion etc. We have not come across any cases in which Class – I & II officers are approaching this High Court in these types of litigation. Therefore, the Cabinet of ministers should consider why Class – III and IV employees are being



victimized of the wrong and adamant approach of higher officials of the concerned Department so that harassment of the Class – III & IV employees and wasting the valuable time of the Court can be avoided.

08. The State Government has framed a Litigation Policy in the year 2018, but we have not come across any of the matters, in which such policy was applied. In the said policy, there is a provision for the constitution of State and District Level Committee, Department-wise Committee to settle petty disputes but till today they are not liable to come to this High Court. It appears that the said policy is lying in the files and gathering dust.

09. In view of the above, the Writ Appeal stands dismissed with a cost of Rs.20,000/- which shall be deposited with the High Court Legal Aid Services Authority, Indore. The cost shall be recovered from the Chief Engineer, Public Health Engineering Department, Bhopal who gave an opinion to file the writ appeal without examining the facts and law involved in this case.

A copy of this order be sent to the Chief Secretary of the Government of Madhya Pradesh for compliance and necessary action. We hope and trust that he will look into it seriously and report the outcome before this Court.

(VIVEK RUSIA)  
J U D G E

(GAJENDRA SINGH)  
J U D G E