IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2946 OF 2010

The State of Maharashtra ...Petitioner

versus

Smt. Mandabai Punamchand Bakle and others ...Respondents

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Mrs. S.A. Dhumal, A.G.P. for the petitioner
Mr. S.D. Dhongde, Adv. for R. No. 1 to 8, 14, 19 to 22, 24 to 26 and 28.

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CORAM : A. V. NIRGUDE AND V. K. JADHAV, JJ.

Date of Reserving the Order : 31.08.2015

Date of pronouncing the Order : 04.09.2015

PER COURT (PER V.K. JADHAV, J.) :-

1. Being aggrieved by the judgment and order dated 31.7.2009, passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad, in Original Application No. 534 of 2008, the State of Maharashtra has preferred this writ petition.

Brief facts, giving rise to present writ petition, are as follows:-

2. The respondents herein are the widows of Government servants, who died in harness. By virtue of provisions of

Maharashtra Civil Service (Pension) Rules, the respondents have been granted family pensions by the respective departments, where their husbands were serving, and they are in regular receipt of such pension. The Government of Maharashtra, Finance Department vide Resolution dated 20.7.2004 took a decision to merge 50% of dearness allowance in the basic pay of pension of the pensioners. Accordingly, the said benefits were made applicable to the respondents-widows. However, all of a sudden, the Government has taken a decision vide Resolution dated 18.2.2008 to withdraw the said benefit of merger of 50% dearness allowance in their basic family pension. Being aggrieved by the same, the respondents-widows challenged the said decision of the Government of Maharashtra and consequent action of recovery of amount paid to them, by filing Original Application No. 534 of 2008 in the Maharashtra Administrative Tribunal Bombay, Bench at Aurangabad.

3. The learned Member of the Tribunal by impugned judgment and order dated 31.7.2009, in Original application No. 534 of 2008 has partly allowed the Original Application and thereby set aside the subsequent Government Resolution dated 31.8.2008 to the extent of recovery of amount against the said merger of 50% dearness allowance in the family pension. Being aggrieved by the same, the State has preferred the present writ petition.

4. The learned A.G.P. for the petitioners submits that the learned Member of the Tribunal has set aside the Government Resolution dated 31.8.2008 without giving any reason and even though no prayer is made by the applicants regarding challenge to the said Government Resolution in the Original Application. The learned A.G.P. further submits that the excess amount paid is required to be recovered from the respondents. The learned A.G.P. therefore, submits that the impugned order is thus liable to be quashed and set aside.

5. The learned counsel for the respondents submits that the action of recovery of benefits towards merger of 50% dearness allowance is arbitrary, illegal and without affording any opportunity of being heard to the respondents. The learned counsel for the respondents submits that no recovery can be claimed from the persons who are retired or on the verge of retirement, as has been held by the Apex Court in the case of ***State of Punjab and others vs. Rafiq Masih (Whitewasher), reported in (2015) 4 SCC 334.*** The learned counsel for the respondents thus submits that the learned Tribunal has rightly dealt with the issue and set aside the subsequent Resolution dated 31.8.2008 to the extent of recovery of amount against the said merger of 50% dearness allowance from family

pension being paid to the respondents-widows.

6. We have considered the submissions canvassed by learned counsel for respective parties. In the case of ***State of Punjab (supra)*** in para 12 of the judgment, the Apex Court has summarized few situations, wherein the recoveries by the employer is held to be impermissible in law. Para 12 of the said judgment reads thus:-

> "12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:
>
> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
>
> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
>
> (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
>
> (v) In any other case, where the Court arrives at the conclusion,

> that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

7. In the present case, the recovery is sought by the various departments from family pension granted to the widows of the Government employees with the help of subsequent Government Resolution dated 31.8.2008 against the merger of 50% dearness allowance from family pension. In view of the authoritative pronouncement of the Apex Court, as aforesaid, the same is impermissible and consequently improper, incorrect and illegal. The learned Tribunal has rightly set aside the action of recovery initiated by various departments against the respondents. In the light of above, there is no substance in writ petition. The writ petition is liable to be dismissed. Hence, we pass the following order:-

O R D E R

i) Writ petition is hereby dismissed.

ii) In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.) **(A. V. NIRGUDE, J.)**

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