

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW PETITION ST. NO. 25669 OF 2013
IN
WRIT PETITION NO. 7887 OF 2011**

The State of Maharashtra
and others.

..APPLICANTS

VERSUS

Vasant Sahebrao Warangule
and others.

RESPONDENTS

...
Mrs. M.A. Deshpande, A.G.P. for the applicants.

...

**CORAM: R.M. BORDE &
S.S.SHINDE, JJ.**

Date : 16th July, 2015

PER COURT :

The instant application, seeking review of the order, is presented on the ground that, the decision of the Kerala High Court, on which reliance has been placed for granting relief in favour of the petitioner, stands modified in intra-court appeal presented before the Division Bench of Kerala High Court.

2. The learned Single Judge of Kerala High Court

delivered the judgment in Writ Petition No. 1394 of 2008 and other companion matters on 16.01.2008. The Intra-Court appeal was presented against the said judgment to the Division Bench of Kerala High Court, which came to be allowed on 10th September, 2012. The Division Bench of this Court at Principal Seat was considering an identical issue in the matter of **Shivaji University Teachers Association and others V/s The University Grants Commission and others** and on placing reliance on the decision of the Kerala High Court and further observing that, the State of Maharashtra is not opposing the relief to extend the benefit claimed by the petitioners on the same lines, proceeded to allow the Petitions of the teachers. It is observed in para 5 of the said judgment of the Division Bench that, even the University Grants Commission has supported the stand of the petitioners before the Division Bench and even Union of India supported the claim of the petitioners and had given no objection for granting the scale of pay of Rs. 14,940/- from the date of completion of five years as Readers/Selection Grade Lecturers. It is noticed that, the Division Bench dealing with the matter at Principal Seat, apart from placing reliance on the decision of the

Division bench of Kerala High Court has recorded independent reasons for supporting the conclusion and for allowing the Writ Petitions. The judgment delivered on 8th April, 2011 by the Division Bench at Principal Seat in Writ Petition No. 3324 of 2010 was even followed in Writ Petition No. 9218 of 2011 and other companion matters on 29th February, 2012.

3. This Court dealing with the instant Writ Petition, relying upon the decision rendered by the Division Bench at Mumbai, allowed the Writ Petition. The State Government is objecting now to the decision on the ground that, the judgment delivered by the learned Single Judge of Kerala High Court has been set aside by the Division Bench in an intra-court appeal.

4. Firstly, the subsequent decision by the Division Bench of Kerala High Court overruling the decision of the Single Judge cannot be a ground for reviewing the order passed by the Division Bench of this Court on 10th September, 2012. Apart from this, this Court, while allowing the Petition has placed reliance on the decision of the

Division Bench at Mumbai and, as has been recorded above, the Division bench at Mumbai has recorded independent reasons in support of the conclusion drawn by the Court. It has not been demonstrated that, the decision of the Division Bench at Mumbai in the matters referred to above, has been reviewed or has been set aside by the superior Court.

5. So far as the aspect of recovery of amount is concerned, the reliance has been placed by this Court while delivering the judgment in Writ Petition on the ratio laid down by the Hon'ble Supreme Court in the case of **Syed Abdul Qadir and others V/s State of Bihar and others** reported in **2009 (3) SCC 475**. The Supreme Court in a recent judgment in the matter of **State of Punjab and others V/s Rafiq Masih (White Washer) and others** reported in **(2015) 4 SCC 334** has laid down certain guidelines in the matter of recovery of amount paid to an employee in excess of his entitlement. The Supreme Court has observed in paras 7 and 8 of the judgment as follows :-

“7. Having examined a number of judgments rendered by

this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover."

6. Apart from the application of considerations of

iniquitous and arbitrariness, the Supreme Court has laid down certain principles in respect of issue of recoveries. Those find place in para 18 of the judgment, which reads thus :-

“18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the 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. For the reasons stated hereinabove, we are of the view that, the amount paid to the employees need not be recovered, since such a move by the State Government would be iniquitous and more unfair, wrongful, improper, unwarranted and would outweigh the corresponding rights of the employer to recover. It needs to emphasises that, the employee has already retired on attending the age of superannuation.

8. For the reasons recorded hereinabove, the application seeking review of the order passed by this Court is devoid of substance, hence stands rejected.

(S. S. SHINDE, J.)

(R.M. BORDE,J.)

sga/-