IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10687 OF 2014
(BABURAO TULSHIRAM NIKAM VS. COMMISSIONER AND OTHERS)
WITH
WRIT PETITION NO.10688 OF 2014
(PRABHAT PAHADU SOLANKE VS.COMMISSIONER AND OTHERS)
WITH
WRIT PETITION NO.10689 OF 2014
(MADHUKAR KONDIRAM LANGOTE VS.COMMISSIONER AND OTHERS)

Mr.P.V.Barde, Advocate for the petitioners.
Mr.U.S.Mote, AGP for respondent Nos. 1 to 4.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 30/07/2015

PER COURT :

1. After hearing the learned Advocates for the respective sides for quite some time on 22/07/2015, I had passed the following order :-

"1. The petitioners have claimed the benefit of the promotion scheme floated under G.R. dated 08/06/1999. Effect of the said scheme is un-disputedly from 01/10/1994. Clause 2(b) of the G.R. indicates that the promotion would be granted subject to seniority, eligibility, departmental examination. Clause 2(c) indicates that the candidate must have put in 12 years of service.

2. I cannot trace any educational qualification as a primary condition for eligibility under the scheme. A similar G.R. dated 20/07/2001 also does not speak of educational qualifications. For the first time, the respondents are canvassing that the G.R.

dated 10/02/1983 has an overriding effect on the 1995 and 2001 G.R's. It was not the case of the respondents either before the Industrial Court or in their affidavit in reply dated 22/01/2015 filed in these petitions that the G.R's. of 1995 and 2001 have to be read in tune with 1983 G.R.

3. In paragraph No.5 of the affidavit in reply, it is contended by the respondents that the concerned candidate must have passed 8^{th} *standard with English as a subject in order to be eligible for the Assured Career Progress Scheme.*

4. The respondents justify their action of withdrawing the benefits of the scheme given to the petitioners on the plea that it was unknowingly extended to them oblivious that they were not eligible since they had not passed 8^{th} *standard with English subject. Neither passedin the written statement before the Industrial Court nor in the affidavit before this Court, which is filed by the District Deputy Commissioner, Animal Husbandry, Ahmednagar, have the respondents disclosed the source of their contention as regards educational qualification.*

5. This matter has been virtually heard finally at admission stage.

6. It is, therefore, necessary that a responsible respondent, preferably the Commissioner, Animal Husbandry or the Divisional Additional Commissioner, Animal Husbandry, respondent Nos. 1 or 2 need to disclose the basis of their *contention set out in paragraph No.5 of the affidavit in reply dated 22/01/2015.*

7. The learned Counsel for the respondents shall, therefore, make a statement on 30/07/2015. Further extension of time shall not be granted. In the event, the basis of the contention in paragraph No.5 is not disclosed on the next date, these matters would thereafter be decided."

2. The learned AGP submits today that the 1995 GR prescribes the eligibility criteria. The 1983 GR is with regard to eligibility for being appointed in service. It, therefore, has to be read into the 1995 GR.

3. Mr.Barde has opposed the contentions of the learned AGP on the ground that firstly the State cannot go beyond the 1995 GR since the eligibility prescribed under the said GR does not indicate that a candidate shall have to be educated upto the 8th standard with English as a language subject. He further submits that even the written statement filed by the respondents before the Industrial Court does not make any reference to the 1983 GR which was orally argued before the Industrial Court.

4. I find that in all these matters, the issue is as regards the applicability of the scheme floated by the Government under the GR dated 08/06/1995. I do not see any clause pertaining to the eligibility of a candidate set out in the said GR, which is based on the educational qualification of a candidate. The factum of appointment of these petitioners cannot be called in question only when it came to considering the applicability of the GR dated 08/06/1995. Neither has the respondent come out with a proper explanation nor could it establish any nexus in between the GR dated 10/02/1983 and the GR dated 08/06/1995.

5. If the 1995 GR does not refer to the Educational Qualification as a part of the eligibility criteria and if these petitioners have been engaged and appointed in service and the respondent has not raised any objection as regards their qualifications, I am of the view that the respondents cannot interlink the 1983 GR with the 1995 GR.

6. The Industrial Court has also lost sight of this fact. For this purpose, I would be issuing directions to the respondents to consider the claims of the petitioners afresh and to be decided within 90 days since they have all superannuated and their pensionery benefits including gratuity has been withheld only because of the pending

litigation.

7. In so far as the order of recovery dated 02/05/2013 in relation to these 3 petitioners is concerned, the same is rendered unsustainable in the light of the ratio laid down by the Apex Court in the matter of Syed Abdul Qadir and others Vs.State of Bihar and others, 2009(3) SCC 475 and in the matter of State of Punjab Vs.Rafiq Masih (White Washer), 2015 DGLS (Soft.) 320.

8. In the Syed Abdul Qadir case (supra), the Apex Court has drawn its observations in paragraph No.58, which read as under :-

> "*The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs.*

Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99."

9. Similarly, in the State of Punjab case (supra), this Court has considered the controversy and has observed in paragraph No.12 as follows :-

"*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, summarise 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 employers right to recover."

10. In the instant case, the respondents have not taken a stand that the benefits of the 1995 GR were obtained by the petitioners by playing a fraud on the Department or by mis-representation. In fact, the respondents have taken a stand that the benefits were erroneously granted. In the light of the fact that laches are not attributed or attributable to the petitioners, the order of recovery dated 02/05/2013 deserves to be quashed and set aside.

11. In the light of the above and in the light of the ratio laid down by the Apex Court in the case of Syed Abdul Qadir and the State of Punjab (supra), the impugned order dated 02/05/2013 is quashed and set aside. The impugned order of the Industrial Court dated 05/11/2014 delivered in Complaint (ULP) Nos.170/2013, 171/2013 and 172/2013 stands modified. The respondents shall not resort to recovery of the benefits already paid to the petitioners under the 1995 GR.

12. Similarly, the respondents are directed to keep in view that there is no eligibility criteria touching the educational qualifications of the petitioners while deciding their eligibility under the GR dated 18/06/1995 and therefore shall consider the cases of the petitioners afresh and take a decision as regards the applicability of the GR dated 08/06/1995, as expeditiously as possible and preferably on or before 31/10/2015. The respondents shall note that a request for extension of time to take a decision shall not be entertained in the light of the fact that the petitioners in the first two petitions have superannuated, their pensionary benefits and gratuity benefits depend upon the applicability of the GR dated 18/06/1995 and which are still not made available to them.

13. In the event, the respondents conclude that the said GR is applicable to all the petitioners, they shall promptly release the pensionery benefits and the gratuity of the two petitioners within 3 months from the date of their decision. In the event any decision prejudicial to the interest of the petitioners is arrived at by the respondents, they shall specifically communicate their decision to the petitioners, who shall be at liberty to resort to available legal remedies.

(RAVINDRA V. GHUGE, J.)