

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7418 OF 2012

Gaikwad Bhanudas Shankar & Ors.

... Petitioners

Vs.

The State of Maharashtra & Ors.

... Respondents

Mr.S.P. Kadam for the Petitioner

Mr.Vikas Mali, AGP, for Respondent Nos.1, 2 & 3

CORAM: **SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.**

DATE: **16th JANUARY, 2015**

ORAL JUDGMENT (PER SMT. VASANTI A. NAIK, J.):

Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the parties.

By this petition, the petitioners have challenged the orders directing the recovery of amounts paid to the petitioners as stagnation increments.

Mr.Kadam, the learned Counsel for the petitioners, challenges the impugned orders by relying on the judgment of the Hon'ble Supreme Court in the case of **Syed Abdul Qadir & Ors. vs. State of Bihar & Ors.**¹ It is submitted that if an employee is not at fault in securing the excess

¹ 2009 AIR (SCW) 1871

payments from the government – employer and if the amount is not paid in excess to an employee on account of any misrepresentation or fraud on the part of the employee, then such amount could not be recovered from the employee at the fag end of his career or after his retirement.

Mr.Mali, the learned Assistant Government Pleader appearing on behalf of the respondents, supported the impugned orders but fairly admitted that in view of the aforesaid judgment, in the case of **Syed Abdul Qadir & Ors. vs. State of Bihar & Ors. (supra)**, the amount paid to an employee in excess could not have been recovered if the said amount was not paid to the employee on account of the misrepresentation or fraud on the part of the employee.

On a perusal of the judgment in the case of **Syed Abdul Qadir & Ors. vs. State of Bihar & Ors. (supra)**, it appears that the respondents were not justified in recovering the amount paid to the petitioners as stagnation increments after the petitioners stood superannuated. Hence, in view of the judgment reported in **Syed Abdul Qadir & Ors. vs. State of Bihar & Ors. (supra)**, the impugned orders are liable to be quashed and set aside.

Hence, for the reasons aforesaid, the Writ Petition is allowed. The impugned orders are quashed and set aside. Rule is made absolute in the aforesaid terms with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)