

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2332 OF 2016

1. Dr. Sadashiv s/o Marutirao Kendre,
Age : 59 years, Occu. Retired,
R/o 9B, Abhinandan Terrace,
Sut Mill Road, Latur,
Tq. and District Latur
2. Dr. Rajan s/o Digambarrao Parlikar,
Age : 59 years, Occu. Retired,
R/o Yogeshwar Sankul,
Samarthnagar, Bhoom,
Tq. Bhoom, District Osmanabad

PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32
2. The Principal Secretary,
Finance Department,
Mantralaya, Mumbai – 32
3. The Accountant General (A & E),
Maharashtra-2,
Civil Lines, Nagpur – 440 001
4. The Director of Health Service,
Arogya Bhavan,
St. Georges Hospital Campus,
Near C.S.T., Mumbai
5. The Deputy Director of Health Services,
Osmanabad Division, Osmanabad
6. The Chief Executive Officer,
Zilla Parishad, Osmanabad
7. The District Health Officer,
Zilla Parishad, Osmanabad

RESPONDENTS

Mr. G.G. Kadam, Advocate for the Petitioners
Mr. S.B. Yawalkar, A.G.P. for respondent Nos. 1 to 5
Mr. S.B. Gastgar, Advocate for respondent Nos. 6 and 7

**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

JUDGMENT RESERVED ON : 5th AUGUST, 2016

JUDGMENT PRONOUNCED ON : 22nd AUGUST, 2016

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.

2. Petitioner Nos. 1 and 2 have challenged the orders dated 14th October, 2015, issued by respondent No.7, directing recovery of Rs. 4,93,540/- and Rs. 6,00,101/- from them respectively from their Death-cum-Retirement Gratuity towards excess payment of salary made during the period from 1st March, 2009 to 31st January, 2015 and from 1st March, 2009 to 31st March, 2015, respectively.

3. The learned counsel for the petitioners submits

that there was no fault on the part of the petitioners for fixation of his pay. They received the amount of salary under the bonafide belief that it was rightly fixed by respondent No. 7. Petitioner Nos. 1 and 2 retired on attaining the age of superannuation on 31st January, 2015 and 31st March, 2015, respectively. Both of them were class/Grade-III employees. Therefore, in view of the judgment in the case of ***State of Punjab and others, etc. V/s Rafiq Masih (White Washer) etc. AIR 2015 S.C. 696***, the amount of excess payment made due to wrong fixation of pay of the petitioners cannot be recovered from them.

4. The learned A.G.P., appearing for respondent Nos. 1 to 5 and the learned counsel for respondent Nos. 6 and 7 strongly opposed the petition. They submit that the pay of the petitioners has been wrongly fixed with effect from 1st March, 2009. The said mistake was noticed by the Pay Verification Unit. After noticing the said mistake, it was decided to recover the amount of excess payment of salary made to the petitioners. They submit that the petitioners were not entitled to get the said excess amount of salary. The petitioners

are liable to repay the same. They, therefore, pray that the writ petition may be dismissed.

5. Undisputedly, the petitioners were the class/Grade-III employees of respondent Nos. 6 and 7. They retired on attaining the age of superannuation on 31st January, 2015 and 31st March, 2015, respectively. The amount sought to be recovered from them has been paid to them not because of any misrepresentation or fraud on their part. There is nothing on record to show that the petitioners had knowledge that the amount that was being paid to them was more than what they were entitled to get. The excess payment has been made to the petitioners under a bonafide mistake on the part of the concerned authority, for which the petitioners cannot be held responsible. In the circumstances, the judgment in the case of **State of Punjab and others, etc.** (supra) cited by the learned counsel for the petitioners would be applicable to the facts of the present case. In the said judgment, the Hon'ble the Supreme Court of India has summarised some of the situations when recovery by the employer would be impermissible in law. They are as under :-

(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.

6. The case of the petitioners would fall within the Clauses (i) and (ii) referred to above. In the

circumstances, the impugned action on the part of respondent No. 7 for recovery of the excess amount paid to the petitioners as mentioned in the orders dated 14th October, 2015 cannot be said to be justifiable. The Writ Petition is liable to be allowed. In the result, we pass the following order :-

O R D E R

- (1) The writ petition is allowed.
- (2) The respondents shall not recover from the amounts of the petitioners' Death-cum-Retirement Gratuity, the amount due and payable from them towards excess payment made to them because of wrong pay fixation.
- (3) Rule is made absolute accordingly.
- (4) No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE