

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3646 OF 2016

Parvesh Isak Pathan,
age: 61 years, occu: retired,
R/o At Takli, Post Upali
Tq. Sillod, District: Aurangabad

Petitioner

Versus

- 1 The State of Maharashtra,
through: Its Secretary,
Public Works Department,
Mantralaya, Mumbai – 32
- 2 The Chief Executive Officer,
Zilla Parishad, Aurangabad
- 3 The Executive Engineer (Civil)
Zilla Parishad, Aurangabad
- 4 The Deputy Executive Engineer (Civil)
Zilla Parishad, Aurangabad
- 5 The Assistant Engineer (Class-I)
Sub-Divisional Office,
Zilla Parishad (Civil), Kannad
- 6 The Senior Accountant Officer,
Finance Department,
Zilla Parishad, Aurangabad

Respondents

Mr.S.P. Salgar advocate for the petitioner
Mr.S.B. Pulkundwar Assistant Govt. Pleader for Respondent No.1
Mrs. R.K. Laddha advocate for respondent Nos.2 and 3

CORAM : **R.M. BORDE &
K.K. SONAWANE, JJ**

(Date : 17th October, 2016.)

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final decision, at admission stage.

3 The petitioner is objecting to the action taken by the respondents Nos.2 to 4, effecting deduction of an amount of Rs.76,707/- towards amount of salary, allegedly paid in excess of the entitlement of the petitioner during the period 30.10.2007 to 31.5.2012.

4 The order, directing recovery of the amount appears to have been passed on the eve of retirement of the petitioner. The petitioner has retired on attaining age of superannuation on 31.5.2012, whereas the order, directing recovery of the amount appears to have been issued on 27.2.2012. The petitioner states that, the amount has already been recovered from the pensionary benefits receivable by him. It is also contended that, the recovery that has been enforced caused serious financial prejudice to the

petitioner, who is a retired employee.

5 The petitioner invites our attention to the Judgment of Supreme Court in the matter of **State of Punjab Vs. Rafiq Masih** (2015 AIR SCW 501) and contends that, the enforcement of recovery by the respondent is in violation of the parameters laid down by the Supreme Court in the aforesaid Judgment. The Supreme Court has laid down the principles in respect of enforcement of recovery of the amount from the employee out of amount of pension or pensionary benefits. The Supreme Court held, as under:-

“ 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, summaries 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 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."

In any case, in respect of the alleged payment of excess amount made to the petitioner, petitioner cannot be held responsible or no blame can be attributable on his part.

6 In view of the law laid down by the Supreme Court in the matter referred to above and since the amount has been

recovered on the eve of his retirement i.e. few days prior to his superannuation and further the employee himself is not responsible for the receiving alleged excess amount wrongfully, which has in fact been paid to him on account of wrong fixation of pay, the action of respondent enforcing recovery is illegal.

7 For the reasons recorded above, the writ petition deserves to be allowed and the same is accordingly allowed. The action of respondent directing recovery of amount of Rs.76,707/- from the pensionary benefits, receivable to the petitioner is quashed and set aside. The respondents are directed to return back and repay the afore said amount to the petitioner as expeditiously as possible and preferably within a period of four months from today.

8 Rule is accordingly made absolute.

9 There shall be no order as to costs.

(K.K. SONAWANE, J)

(R.M.BORDE, J)