

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3715 OF 2016

Dr. Nandkumar s/o Ganpatrao Khadke,
Age : 60 years, Occu. Retired,
R/o Row House No. 88, "Kasliwal Purwa",
Opp. Airport, Chikalthana,
Tq. and District Aurangabad

PETITIONER

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,
Aurangabad Division, Aurangabad
6. The Chief Executive Officer,
Zilla Parishad, Aurangabad
7. The District Health Officer,
Zilla Parishad, Aurangabad

RESPONDENTS

Mr. G.G. Kadam, Advocate for the Petitioner
Mr. S.B. Yawalkar, A.G.P. for respondent Nos. 1 to 3
None for respondent Nos. 4 and 5, though served
Mr. Z.Y. Pathan, Advocate for respondent Nos. 6 & 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. The petitioner has challenged the action of respondent No.7, directing recovery of Rs. 4,70,610/- from his Death-cum-Retirement Gratuity towards excess payment of salary made during the period from 1st April, 2009 to 31st March, 2014.

3. The learned counsel for the petitioner submits that there was no fault on the part of the petitioner for fixation of his pay. He received the amount of salary under the bonafide belief that it was rightly fixed by respondent No. 7. The petitioner retired on attaining the age of superannuation on 31st March, 2014.

The petitioner was a class/Grade-III employee. 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 petitioner cannot be recovered from him.

4. The learned A.G.P., appearing for respondent Nos. 1 to 3 and the learned counsel for respondent Nos. 6 and 7 strongly opposed the petition. They submit that the pay of the petitioner has been wrongly fixed with effect from 1st April, 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 petitioner. They submit that the petitioner was not entitled to get the said excess amount of salary. The petitioner is liable to repay the same. They, therefore, pray that the writ petition may be dismissed.

5. Undisputedly, the petitioner was the class/Grade-III employee of respondent Nos. 6 and 7. He was due for retirement on attaining the age of superannuation on 31st April, 2014. The amount sought to

be recovered from him has been paid to him not because of any misrepresentation or fraud on his part. There is nothing on record to show that the petitioner had knowledge that the amount that was being paid to him was more than what he was entitled to get. The excess payment has been made to the petitioner under a bonafide mistake on the part of the concerned authority, for which the petitioner 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 petitioner 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 petitioner 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 petitioner as mentioned in the order dated 19th August, 2014 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 amount of petitioner's Death-cum-Retirement Gratuity, the amount due and payable from him towards excess payment made to him because of wrong pay fixation.
- (3) Rule is made absolute accordingly.
- (4) No costs.

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

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

npj/wp3715-2016