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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4815 OF 2016

Ahmednagar Zilla Nagar Palika Kamgar Union,
Trade Union Center, Tahsil Kacheri Road,
Ward No.1, Shrirampur,
Tal.Shrirampur, Dist.Ahmednagar.
Through its General Secretary.
Balasaheb Annasaheb Surude.

...PETITIONER

-VERSUS-

Shirdi Nagar Panchayat, Shirdi,
Post Shirdi, Taluka Rahata,
District Ahmednagar.
Through its Chief Executive Officer.

...RESPONDENT

...

Advocate for Petitioner : Shri Barde Parag Vijay.
Advocate for Respondent : Shri V.D.Hon, Senior Advocate h/f Shri Hon
Ashwin V..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th September, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner Union representing 16 employees of the

Respondent/ Municipal Council for whom Complaint (ULP) No.207/2013 has been filed, is aggrieved by the latter part of clause (3) of the operative part of the judgment of the Industrial Court dated 11.01.2016.

3 I have heard Shri Barde, learned Advocate for the Petitioner and Shri Hon, learned Senior Advocate on behalf of the Respondent/ Municipal Council at length.

4 The short issue that requires consideration in this petition is as to whether, the Industrial Court has rightly understood the meaning of the clause at Sr.No.28 paragraph Nos.3.6.3 and 3.25.1 set out on page 30 which is part of the Shri PMA Hakim Committee's report.

5 The Respondent started recovering arrears of additional increments paid to such employees who had acquired additional qualifications by passing the departmental examination and by enhancing their qualifications, thereby, made them eligible for additional increments, as per the Government Resolution dated 18.02.1975.

6 Clause 2(vii) of the Government Resolution dated 18.02.1975 reads as under:-

“(vii) If a Municipal servant who does not have less than

three years more to serve, passes his Local Government Diploma or Local Self Government Service Diploma Examination, after such a stage in the service that he has either already reached the maximum of his scale or is due to get only one increment before he reaches his maximum, he may in the former case be granted an amount equal to the sum of two increments last drawn by him before he reached the maximum as special pay (day) or in the latter case the increment next due plus a special pay equal to the amount of that increment.”

7 It is undisputed that with regard to some posts, the Municipal Council used to grant higher pay scale and higher increment based on higher qualifications. 16 employees are those who had acquired higher salaries and higher increments in the light of their higher educational qualifications at the time of their entry into employment. Pursuant to such entry and on the condition of such higher pay scale and higher increment, they have been continued in employment. It was under the Hakim Committee recommendations that such higher pay scales and higher increments based on higher educational qualifications, were not to be extended to anybody. The said clause 28 which is the nucleus of this litigation reads as under:-

अ. क्र.	परिच्छेद क्रमांक	राज्य वेतन सुधारणा समिती, २००८ च्या अहवालातील शिफारशी	शासनाने घेतलेला निर्णय
२८	३.६.३ व ३.२५.१	काही पदांना सेवाप्रवेशाच्यावेळी देण्यात येणारे उच्च प्रारंभिक वेतन तसेच शैक्षणिक अहर्तेच्या आधारावर मंजूर करण्यात येणाऱ्या वेतनवाढी यापुढे अनुज्ञेय असणार नाहीत.	स्विकृत

8 The contention of Shri Barde is that benefits as per the existing service conditions which are being legally extended to 16 employees, cannot be taken away by introduction of a subsequent Government Resolution. He submits that the Respondent Municipal Council has passed two resolutions dated 08.09.2006 and 09.01.2009 by virtue of which those employees who had reached the level of maximum increments, were extended two additional increments. The contention is that whatever may be the change pursuant to the Hakim Committee recommendations which have been accepted by the Resolution dated 27.02.2009, such recommendations cannot be made applicable retrospectively.

9 Shri Hon strenuously submitted that the above reproduced Marathi clause of the Government Resolution dated 27.02.2009 means that those persons who were already being extended higher increments by the subsequent Government Resolution, such increments would be taken away and they would be deprived of the same and if excess payments are made, they would be recovered from such employees.

10 I do not find that the submissions of the Respondent in the

light of the language used in the Marathi clause reproduced above could be sustained. The translated meaning of the said clause would be “those positions/ posts to which higher pay scales and higher increments based on higher educational qualifications were available at the time of entry, would hence forth not be available at the said stage.” It means that hence forth nobody who enters services and occupies the said post to which such higher pay scales and higher increments were available, would not be entitled for the same. In my view, the said clause does not mean that those employees who had entered service on the condition of higher pay scale and higher increments which were extended to them at the time of entry and paid regularly, would hence forth be deprived of such higher pay scales and payments of such increments would be stopped.

11 Needless to state, interpretation of any provision newly introduced and made applicable to existing employees, cannot result in taking away those benefits which have been already made available to them from the date of entry into service or during their service when such benefits are extended to them from time to time. The Government Resolution dated 27.02.2009 will become applicable prospectively and the same cannot be interpreted to cause prejudice to the service conditions of the existing employees and take away benefits which they have been extended prior to the introduction of the Government Resolution, unless

better benefits are being made available. Interpretation of such Government Resolution cannot be to the prejudice of the existing service conditions of the employees.

12 Clause 3 of the operative part of the impugned judgment reads as under:-

“(3) *The part of the action of respondent Nagar Panchayat to recover the amount of additional increments paid to the employees in Annexure-A prior to 27th February, 2009 is quashed and set aside being illegal. The respondent Nagar Panchayat is at liberty to recover the arrears of benefits of additional increments after 27th February, 2009 onwards.*”

13 It is settled law in *Syed Abdul Qadir vs. State of Bihar*, **(2009) 3 SCC 475** and the *State of Punjab vs. Rafiq Masih (White Washer)*, **(2015) 4 SCC 334**, that unless a fraud or misrepresentation is noticed, there cannot be any recovery of money even if it is paid inadvertently.

14 As such, this Writ Petition is partly allowed and the second part of clause 3 i.e. *“The Respondent Nagar Panchayat is at liberty to recover the arrears of benefits of additional increments after 27th February, 2009 onwards.”* shall stand modified and shall read as under:-

“The Respondent Nagar Panchayat would not be at liberty to recover excess payments of benefits or

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additional increments paid after 27th February, 2009 onwards in relation to the cases of these 16 employees. Consequentially, those benefits and increments extended to these 16 employees pursuant to the Resolutions dated 08.09.2006 and 09.01.2009, shall not be recoverable and they shall be entitled for the same since the said benefits have been extended to them prior to the introduction of the Government Resolution dated 27.02.2009.”

15 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)