

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9821 OF 2015

1. The Chief Executive Officer,
Zilla Parishad, Ahmednagar.

2. The Block Development Officer,
Panchayat Samiti, Pathardi,
Tq. Pathardi, Dist. Ahmednagar.

..Petitioners

Versus

Bandu Rambhau Chavan
Age 61 years, Occ. Retired,
A/p Pathardi, Tq. Pathardi,
District Ahmednagar.

..Respondent

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Advocate for Petitioners : Shri Shelke Shivaji T.
Advocate for Respondent : Shri Barde P.V. h/f Shri Temkar R.K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 18, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The respondent herein had filed Complaint (ULP) No. 84 of 2013

before the Industrial Court. Shri Shelke points out that the prayers in the said complaint were with regard to the orders of re-fixation and direction to refund illegal deduction / recovery. No prayer for pension was put forth by the respondents. Despite the same, the Industrial Court has directed the petitioner to start the pension of the respondent / employee within one month.

5. Shri Shelke has strenuously criticized the impugned judgment of the Industrial Court by which, the recovery of excess amounts has been prevented and the recovered amount is directed to be refunded. He submits that the petitioner had wrongly settled the pay scale / revision in pay scale of the respondent / employee. After passage of time, it was realized that the fixation was wrongly done and inadvertently excess amount has been paid to the respondent. He, therefore, justifies the order of re-fixation of the respondent's pay scale and recovery of the amounts paid in excess.

6. He further submits that the Industrial Court could not have travelled beyond the prayers put forth by the employee. When there was no prayer for grant of pension, the Industrial Court, without assigning any reason has proceeded to direct the petitioner to commence the payment of pension to the employee. He, therefore, prays that the impugned order be quashed and set aside and the complaint be dismissed.

7. Shri Barde, learned Advocate for the respondent / employee supports the impugned judgment. Contention is that neither has the respondent misled the petitioner while the fixation of pay scale was undertaken nor has the respondent played any fraud or mischief for acquiring excess payment. The fixation of the pay scale was within the domain of the petitioner. Having so done, it could not have resorted to the activity of re-fixation of pay scale. The respondent has, on the basis of oral and documentary evidence, established that the fixation done by the petitioner with regard to the pay scale of the respondent was correct. The Industrial Court has arrived at findings on facts and this Court, in its supervisory and writ jurisdiction, should not interfere only because a different view is possible.

8. He submit that during the pendency of the complaint, the respondent has retired. Considering his retirement, the issue of pension cropped up. The Industrial Court exercised jurisdiction in order to deal with the issue of pension and has accordingly passed a consequential order. He, therefore, submits that such an order need not be interfered with and in any case, the respondent would be entitled for pension.

9. I have considered the submissions of the learned Advocates.

10. There is no dispute that there are no laches attributed to the conduct of the respondent. It is not the case of the petitioner that he is guilty of mis-representation or playing a fraud on the management for

getting benefits of wrong fixation of pay scales. In short, there are no attributes to the conduct of the respondent / employee.

11. I have gone through the reasons assigned by the Industrial Court. The issue with regard to the recovery of excess payment has been dealt with by the Honourable Supreme Court in the matter of Syed Abdul Qadir Vs. State of Bihar [2009 AIR SCW 1871] and in The matter of State of Punjab and others Vs. Rafiq Masih (WhiteWasher) [AIR 2015 SC 696]. It would be apposite to reproduce paragraph No.12 from the judgment in the case of State of Punjab (supra), which reads as under:-

“12. 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, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from 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."

12. In the instant case, the respondent has retired. He belongs to the Class IV category. He has not earned the benefits of the pay fixation by playing any fraud or by mis-leading the petitioner. I, therefore, find that it would be iniquitous and harsh to cause recovery of excess money paid to the respondent.

13. In the light of the above, I do not find that the direction of the Industrial Court restraining the petitioner from causing recovery of the over payment deserves to be interfered with. I also do not find any reason to interfere with the direction of the Industrial Court to the petitioner to return the amount of Rs.27,000/- without interest. However, the direction to commence the payment of pension to the respondent / employee is concerned, there was neither any prayer nor pleadings in the complaint. The respondent has not chosen to amend his complaint and add the pleadings and the prayers after his retirement during the pendency of the complaint.

14. The learned Division Bench of this Court in the matter of similarly situated employees, has delivered a judgment dated 13.8.2015 in Writ Petition No. 2589 of 2012 (Sheshrao Pataloba Vs. Waybase Vs. The State of Maharashtra) and other and connected petitions, with regard to the claim of pension. Paragraphs 17 and 18 of the said judgment read as under:-

“17. The petitioners may make representations to that effect with the respondent No. 1 - State, which representations would be considered by the respondent No. 1/State sympathetically, considering the fact that, it was the State who was not in a position to absorb the petitioners well within time.

18. It is also made clear that, if such representations are made by petitioners for considering past service for pensionary benefits, to the State, this order would not come in the way for consideration of said representations.”

15. In the light of the above and especially in view of the fact that there are no pleadings and prayers with regard to the pension, the Industrial Court could not have granted the payment of pension to the respondent. As such, the second part of the direction in Clause 4 of the impugned order is quashed and set aside. In short, the direction to start the payment of pension to the respondent stand quashed and set aside.

16. Needless to state, the respondent is at liberty to make a representation for grant of pension to the competent authority / State, which shall decide the same expeditiously, on its own merits.

17. The Writ Petition is, therefore, partly allowed, in the light of the above directions and Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)

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