

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

WRIT PETITION NO. 2763 OF 2016

Municipal Corporation of City of Jalgaon,
Sardar Vallabhbhai Patel Tower,
Navi Peth, Jalgaon,
District Jalgaon.
Through its Deputy Commissioner.

...PETITIONER

-VERSUS-

1 Deelip s/o Jayram Suryawanshi,
Age : 53 years, Occupation : Service,
R/o Plot No.16, Dropadi Nagar,
Jalgaon, District Jalgaon.

2 The Executing Officer,
the State of Maharashtra,
Urban Development, Mantralaya,
Mumbai-400032.

...RESPONDENTS

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Advocate for Petitioner : Shri Patil Pradip R.
Advocate for Respondent 1 : Shri Ravindra Nirmal h/f Shri S.R.Patil.
AGP for Respondent 2/ State : Shri P.N.Kutti.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th September, 2016

Oral Judgment :

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

2 I have considered the strenuous submissions of Shri Patil, learned Advocate for the Petitioner Municipal Corporation, Shri Nirmal, learned Advocate on behalf of Respondent No.1/ Employee and the learned AGP on behalf of Respondent No.2. With their assistance, I have gone through the petition paper book.

3 I find that the issue to be dealt with by this Court is reduced only to the extent of whether, the purported excess salary payment made to Respondent No.1/ Employee deserves to be recovered or not?

4 There is no dispute that Respondent No.1/ Employee was earlier working as a Chlorine Operator and was promoted as a Chemist, which was subject to the condition of approval being granted by the competent authority. It is also not in dispute that the competent authority/ Respondent No.2 herein passed the order dated 28.02.2007 approving the promotion of Respondent No.1 as a Chemist. However, the pay scale of Rs.6500-10500/- payable to the Chemist was granted to the Employee w.e.f. the date of decision which is 28.02.2007.

5 The learned Advocate for the Petitioner has strenuously submitted that since the promotion and payment of the scale payable to the Chemist was made available to Respondent No.1/ Employee subject to

the approval of the appropriate authority, he was put to notice that the same is being paid subject to the decision of the competent authority. This presupposes that if the competent authority does not grant approval or grants approval from a particular date, the pay scale would be available to the Employee only from the date as is set out in the order of the appropriate authority.

6 Shri Patil, therefore, strenuously submits that recovery of amount will have to be allowed considering the fact that the amount paid to the Employee is from the public money/ State exchequer. It is the taxpayers amount and the same cannot be paid to the Employee de-hors the Rules. He, therefore, criticizes the impugned judgment of the Industrial Court dated 18.02.2013 by which Complaint (ULP) No.21/2007 filed by the Respondent/ Employee has been allowed and the order of recovery has been quashed.

7 Shri Patil, however, clarifies that pursuant to the order of the appropriate authority dated 28.02.2007, the Petitioner issued the order dated 28.05.2007 by which it was made clear that the pay scale of Chemist was paid by the Petitioner not from 11.12.2002, but from 13.05.1997. Recovery of amount is, therefore, approximately Rs.1 lac.

8 The learned Advocate on behalf of the Respondent/ Employee has strenuously supported the impugned judgment. It is contended that there is no allegation of misrepresentation or fraud played by the Employee on the Petitioner Corporation. The Petitioner Corporation has itself granted the pay scale considering that the Employee was entitled to the said pay scale. There is no dispute that the said pay scale is available to the Respondent/ Employee and that neither the Petitioner nor the competent authority have overstepped the prescribed Rules while granting the said pay scale. It is, therefore, submitted that recovery of amount ought not to be permitted and more so, in the light of the fact that the Respondent/ Employee has now retired upon attaining the age of superannuation.

9 The issue with regard to recovery of amount has been dealt with by the Honourable Supreme Court on several occasions. In the matter of *Syed Abdul Qadir vs. State of Bihar*, **(2009) 3 SCC 475**, it was concluded that unless an Employee is guilty of misrepresentation or laches are attributed to his conduct which have resulted in excess payment being made to him, there shall be no recovery from such employee.

10 In the matter of *Chandi Prasad Uniyal vs. State of Uttarakhand*, **(2012) 8 SCC 417**, the Honourable Supreme Court once

again dealt with the said issue. Finally, in the matter of the *State of Punjab vs. Rafiq Masih (White Washer)*, **(2015) 4 SCC 334**, it was concluded in paragraph 18 as under:-

- “18. 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, summarise 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.”

11 It is now settled that recovery would be impermissible if the same is with regard to class III and class IV employees. The Respondent/Employee in this case is a Chemist who falls in Class III. Similarly, recovery

from a retired employee or one who is retiring within one year, is also impermissible. Though the Respondent/ Employee was in service when the issue of recovery arose, he has subsequently retired.

12 I find that in such cases where excess amounts have not been paid on the basis of misrepresentation or on account of fraud on the part of the Employee, recovery of amounts should not be permitted. It is undisputed in this case that neither the Employee is alleged to have misrepresented to the Petitioner Corporation for acquiring higher pay scale, nor has he been charged with having indulged in fraudulent act so as to earn excess amount.

13 Considering the above, I do not find that the impugned judgment of the Industrial Court could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)