IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8891 OF 2015

Uttam S/o Devidasrao Wakodkar,
Age : 62 Years, Occu. : Retired,
R/o Ragini Housing Society,
Mandwa Road, Ambajogai. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai - 32.

2. The Director, Higher Education,
Maharashtra State, Pune.

3. The Joint Director, Higher Education,
Aurangabad Region, Aurangabad.

4. The Accountant General, Nagpur.

5. The Accountant General, Mumbai. .. Respondents

Ms. Sneha Kamble, Advocate h/f Shri S. V. Adwant, Advocate for the Petitioner.
Ms. S. S. Raut, A.G.P. for Respondent Nos. 1 to 5.

CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.
DATE : 01ST SEPTEMBER, 2016.

<u>ORAL JUDGMENT</u> (Per S. V. Gangapurwala, J.) :-

. Rule. Rule returnable forthwith. With the consent of parties, taken up for final hearing.

2. The present writ petition is restricted to the extent of recovery claimed by respondents for an amount of Rs. 77,156/- from the amount of gratuity of the petitioner.

3. Ms. Kamble, the learned counsel for the petitioner strenuously contends that, the petitioner stood retired on attaining the age of superannuation on 28.02.2013. From the retiral benefits of the petitioner, respondents sought to recover Rs. 77,156/- on the ground that benefit of stagnant revision of pay scale was wrongly given to the petitioner. The learned counsel for the petitioner submits that, the benefit was granted in the year 2006. The said benefit is sought to be negatived after the petitioner has retired from service. The amount cannot be recovered from gratuity, in view of the bar en-grafted in Sec. 60(1)(g) of the Code of Civil Procedure. The learned counsel further submits that, even otherwise recovery of an amount even paid wrongly cannot be made after lapse of five years. The learned counsel submits that, the recovery would also result in hardship. The petitioner has superannuated from service and from his pensionary and retiral benefits, the recovery is sought to be claimed. The learned counsel relies on the judgment of the

Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** reported in ***(2015) 4 SCC 334***.

4. The learned counsel submits that, the reliance placed by respondents on the letter said to have been given by the petitioner is misplaced. The same is obtained by respondents from the petitioner at the time of forwarding the pension papers and the petitioner had no option but to bow to the dictates of respondents. The learned counsel submits that, the action of recovery claimed pursuant to the impugned order is illegal and be quashed and set aside.

5. Ms. Raut, the learned Assistant Government Pleader submits that, wrongly the benefit was given to the petitioner with regard to the stagnation increment from year 2006 to 2010 and the recovery is rightly claimed. Knowing fully well that the said benefit has been wrongly given, the petitioner has given a consent letter allowing respondents to deduct the amount from the gratuity and it is pursuant to the said consent letter the action has been rightly taken. Now the petitioner cannot turn around and resile from the said fact. The money paid to the petitioner because of wrong fixation is public money. The same is tax payers money and the petitioner cannot be allowed to retain the same. The learned A. G. P. relies on the judgment of the

Apex Court in a case of **Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others** reported in ***(2012) 8 SCC 417***.

6. We have considered the submissions canvassed by the learned counsel for respective parties. It is a fact that, the petitioner stood retired on attaining age of superannuation on 28.02.2013. It also appears that, the petitioner had given consent letter at the time when his pension papers were not being processed and request was made to process and forward the pension papers.

7. In the present matter, it cannot be said to be a fraud played by the employee or that the some role of the employee can be attributed for the wrong payment of the amount. The respondents had given the stagnation increment in the year 2006. The petitioner got the benefit of the same from the year 2006 to 2010 and at the time of retirement of the petitioner on superannuation the recovery is sought to be claimed from the gratuity amount. The benefit given prior to five years, is being recovered from a retired employee from the retiral benefits.

8. The same would tantamount to hardship, as the petitioner does not have any other source of income than his pension and retiral benefits. The Apex Court in the case of **State of**

<u>Punjab and others Vs. Rafiq Masih (White Washer)</u> reported in ***(2015) 4 SCC 334*** has laid down following principles.

> 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.

9. The consent letter sought to be relied by respondents is undated and from the recitals of the said consent letter, it is manifest that the same has been given at the time when his pension papers were not forwarded and request was made by him to process and forward his pension papers. Certainly, the said consent letter appears to be on the dictate of the authorities and *prima facie* cannot be said on the volition of the petitioner.

10. Be that as it may, even otherwise in view of the judgment of the Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** referred to supra said recovery could not have been made, as the petitioner has fulfilled all the criteria laid down in the said judgment.

11. In the light of the above, the impugned order recovering an amount of Rs. 77,156/- from the gratuity amount of the petitioner is quashed and set aside.

12. It is submitted that, recovery is already made. The said amount be refunded to the petitioner within a period of three (03)

months from today. In case the payment is not made within three months as directed, then the respondents would be liable to pay interest @ Rs. 8% per annum.

Rule accordingly is made absolute in above terms. No costs.

Sd/-
[K. L. WADANE, J.]

Sd/-
[S. V. GANGAPURWALA, J.]

bsb/Sept. 16