IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11510 OF 2016

The State of Maharashtra and others Petitioners

Versus

Babu Shankar Shinde Respondent

Mr.S.B. Yawalkar, AGP advocate for the petitioners

CORAM : R.M. BORDE &
SANGITRAO S. PATIL, JJ

(Date : 28th November, 2016.)

PER COURT :-

1 The petitioner State is objecting to the decision rendered on 26.4.2016, by the Maharashtra Administrative Tribunal in Original Application No.254/2015, whereby the Original Application presented by the respondent came to be allowed in terms of prayer clauses A, B and C of the Original Application and petitioner is directed to release the pensionary benefits which have been withheld earlier, within two months from the date of the order.

2 The respondent – original applicant has prayed for a declaration that, the objection raised in respect of fixation of pay in the scale of Rs.950 – 1400 with retrospective effect from 1.1.1986 since 1999 is incorrect and unsustainable in law. The

original applicant also seeks quashment of the orders dated 13.2.2015 and 30.3.2015; where-under, the original applicant has been directed to refund amount of Rs.5,40,095/- which is claimed to have been wrongly paid to the original applicant, respondent-herein.

3 The respondent was appointed in Dairy Development Department in the year 1975 as labour on daily wages. He has been absorbed in Class IV, group 'D' category and worked on various posts such as Labour and Dairy Attendant. The respondent - original applicant has been extended the benefits of revised pay scale of Rs.950 – 1400 with retrospective effect from 1.1.1986 in view of Government Resolution dated 12.3.1999. The original applicant, respondent herein, has retired on attaining age of superannuation since 31.3.2015. The petitioner No.2, original respondent No.2 issued order, thereby cancelling the action of 1999 of extending benefits of pay scale of Rs.950 – 1400 to the original applicant and directed re-fixation of his pay in the scale of Rs.750 – 940. The original applicant contended that, such a drastic action of revising the pay scale, just one month prior to date of retirement, ought not to have been taken and such action is in contravention of the ratio laid down by the Supreme Court in

the matter of **State of Punjab versus Rafiq Masih (2015 All MR 951)**.

4 Learned AGP appearing for the State contends that, in fact the pay scale of Rs.950 – 1400 was extended to the respondent erroneously and in view of the Government resolution dated 10.1.1991, it is permissible for the State to recover the amount wrongfully paid to an employee.

5 Clause 7 of the Government Resolution dated 10.1.1991 provides that the process of recovery of the amount paid in excess of entitlement on account of wrong fixation of pay, shall be initiated and the amount shall be recovered immediately. In the instant matter, the original applicant has been granted benefits of pay scale of Rs.950 – 1400 in the year 1999 with retrospective effect from 1.1.1986. The original applicant was paid salary in the pay scale of Rs.950 – 1400 from 1996 till one month prior to his date of retirement. The State Government did not initiate any action from 1999 till 2015. The Government Policy itself stipulates immediate recovery of the amount, whereas, in the instant matter, steps have been taken after almost 20 years and barely a month prior to retirement of the original applicant. Such an action at the verge of retirement of an employee is not within

contemplation of the Government resolution referred to above by the State, nor is in consonance with the ratio laid down by the Supreme Court in the matter of **State of Punjab & others versus Rafiq Masih (White Washer)** etc. In para No.18 of the Judgment, it is observed thus:

> "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, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:-
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> (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 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 employees, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recovery."

6 The Maharashtra Administrative Tribunal has rightly considered the facts and circumstances of the case and applied the ratio laid down by the Honourable Apex Court in matter of **State of Punjab Versus Rafiq Masih** correctly and directed quashment of the adverse order passed by the State Government. We do not find any merit in the petition. The writ petition, as such stands rejected.

(SANGITRAO S. PATIL, J) (R.M.BORDE, J)

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