

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 118 OF 2016

Prabhakar Lotu Tayade,
Age : 61 years, Occ.: Pensioner,
R/o.: 27, Mohan Nagar, Jalgaon,
Tal & Dist. Jalgaon

..PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary,
Rural and Water Conservation
Department, Mantralaya,
Mumbai - 32
2. Zilha Parishad, Jalgaon
Through its Chief Officer,
Jalgaon, Tal. & Dist. Jalgaon
3. District Health Officer,
Zilha Parishad, Jalgaon,
Tal & Dist. Jalgaon

..RESPONDENTS

Mr. A.R. Syed, Advocate holding for Mr. S.P. Brahme,
Advocate for the Petitioner
Mr. A.V. Deshmukh, A.G.P. for the respondent/State
Mr. M.S. Sonwane, Advocate for respondent nos.2 and 3

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

JUDGMENT RESERVED ON : 11th AUGUST, 2016
JUDGMENT PRONOUNCED ON : 18th AUGUST, 2016

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Rule. Rule made returnable forthwith. With the
consent of the learned counsel for the parties, the

petition is heard finally.

2. The learned counsel for the petitioner, relying on the averments made in the petition as well as subsequent events narrated in Civil Application No. 9043 of 2016, submits that the petitioner retired on attaining the age of superannuation from the post of Projectionist on 31.05.2013. Except the provisional pension and provident fund, other retiral benefits were not given to the petitioner. Therefore, this petition came to be filed for grant of retiral benefits. In the meanwhile, respondent nos.2 and 3 determined the amounts of the gratuity, commutation of pension and difference of regular pension as well as provisional pension of the petitioner. His regular pension was fixed at Rs.10545/- per month with effect from 01.06.2013. The gratuity amount was quantified at Rs.3,42,712/-. The commutation of pension was determined at Rs.4,23,706/-. Thus, the total amount of Rs.7,66,418/- was found to be due and payable to the petitioner. It was informed by respondent nos.2 and 3 vide letter dated 11.01.2016 that excess amount of Rs.7,40,279/- was paid to the petitioner because of wrong fixation of his pay. The said amount

was recovered from the amount due and payable to the petitioner on 06.05.2016. The amount of Rs.2,74,375/- came to be paid to the petitioner towards difference of regular pension and provisional pension. However, the amount of leave encashment due and payable to the petitioner, has not been paid to him.

3. The learned counsel for the petitioner submits that respondent nos.2 and 3 were not entitled to recover the amount of Rs.7,40,279/- from the amount due and payable to the petitioner, on account of excess payment made to the petitioner, due to wrong fixation of pay after his retirement in view of the judgment in the case of **Ramesh s/o Channapa Kompalli Vs. State of Maharashtra and others, 2016(1) Mh.L.J. 389**. He submits that the said amount is liable to be refunded to the petitioner. He further submits that the direction may be given to respondent nos.2 and 3 to refund the said amount as well as to pay the amount of leave encashment to the petitioner.

4. On the other hand, the learned counsel for respondent nos.2 and 3 relying on the averments made in the affidavit-in-reply filed by Dr.S.D. Nimgade,

District Health Officer, Zilla Parishad, Jalgaon, submits that the petitioner has given written undertaking on 08.02.1999 (Exhibit R-1), whereby he has authorised respondent nos.2 and 3 to recover the amount of excess payment made due to wrong fixation of pay from the amount due and payable to him or assured that he himself would pay the same. He submits that respondent nos.2 and 3 had a legal right to recover amount that was paid to the petitioner in excess due to wrong fixation of pay and in view of his specific undertaking given on 08.02.1999. Therefore, the amount that has been recovered from the amount due and payable to the petitioner, cannot be refunded to the petitioner. He further submits that the claim of the petitioner for the amount of leave encashment would be considered by respondent nos. 2 and 3. On these grounds, he prays that the writ petition may be dismissed.

5. It is true that as held in the case of **Ramesh s/o Channapa Kompalli** (supra), the amount that has been paid to the employee by the fault on the part of the employer without there being any misrepresentation or fraud on the part of the employee, cannot be recovered

from him after his retirement. The said judgment would be of no help to the petitioner. As stated above, the petitioner herein had given the written undertaking on 08.02.1999, when his pay was fixed, that the amount paid to him because of wrong pay fixation may be recovered from the amount due and payable to him or he himself would refund the said amount. The petitioner is governed by the provisions of the Maharashtra Civil Services (Pension) Rules, 1982. As per Rule 134A thereof, if in the case of a Government servant, who has retired or has been allowed to retire, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his services, then the excess amount so paid, shall be recovered from the amount of pension sanctioned to him. In the case of **Ramesh s/o Channapa Kompalli** (supra), there was no written undertaking given by the employee for recovery of the amount received by him due to wrong pay fixation. Rule 134A of the M.C.S. (Pension) Rules, 1982 was not under consideration in that case. In view of the above-mentioned distinguishing facts of the present case, the said ruling would not be applicable to the facts of the present case. Respondent Nos. 2 and 3 cannot be said to

have committed any wrong in deducting the amount of Rs.7,40.279/- from the amount of that was due and payable to the petitioner. The petitioner is not entitled to get the said amount refunded.

6. As stated by the petitioner himself in Civil Application No.9043 of 2016, the amount of regular pension, gratuity and difference of regular pension and provisional pension has been paid to him by respondent nos.2 and 3 after filing of this Writ Petition. So far as the claim of the petitioner for the amount of leave encashment is concerned, it would be necessary to direct respondent nos.2 and 3 to consider the same within a stipulated period and pay the amount, if any, due and payable to the petitioner.

7. In the above circumstances, we allow the writ petition partly. Hence, the following order:-

- (i) The Writ Petition is partly allowed.
- (ii) The claim of the petitioner for refund of the amount of Rs.7,40279/- is hereby rejected.
- (iii) Respondent nos. 2 and 3 shall consider the

claim of the petitioner for grant of the amount of leave encashment within four weeks from the date of this order and if it is found that he is entitled to get any amount on that count, shall pay the same to him within six weeks from the date of this order.

- (iv) Rule made absolute in the above terms.
- (v) The Writ Petition is accordingly disposed of.
- (vi) Civil Application No. 9043 of 2016 is disposed of.
- (vii) No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE