

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2010 OF 2016

[Ashok Ramraoji Talatule .vs. The Nagpur Municipal Corporation, Nagpur and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.V. Samarth, counsel for the petitioner,
Shri S.M. Puranik, counsel for the respondents.

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CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : JUNE 14, 2016.

By this petition, the petitioner challenges the order of the respondent-Corporation, dated 18.2.2016 seeking the recovery of an amount of Rs.1,49,804/- from the gratuity payable to the petitioner.

The petitioner was appointed by the respondent-Corporation on the post of Education Officer. The petitioner was working as a Headmaster in the Corporation school. The petitioner was selected by the Promotion Committee and his name was recommended for the post of Education Officer. The petitioner was promoted to the post of Education Officer by the respondent no.1-Corporation on 2.5.2015. The petitioner retired from service on attaining the age of superannuation as a Education Officer on 31.1.2016. After the retirement of the petitioner, the respondent no.1 served the communication, dated 18.2.2016 on the petitioner seeking of deduction of Rs.1,49,804/- from his gratuity.

According to the petitioner, the petitioner was promoted to the post of Education Officer and the respondent-Corporation could not have sought to recover the amount of Rs.1,49,804/- as the petitioner was entitled to receive the same. According to the

petitioner, even if the said amount was wrongfully paid to the petitioner in excess, the said amount could not have been recovered from the gratuity of the petitioner after his retirement. According to the petitioner, the respondent-Corporation could not have reduced the scale of the petitioner after his promotion to the post of Education Officer and the pay of the petitioner, as drawn while serving as the Headmaster ought to have been protected.

Shri Puranik, the learned counsel for the respondent-Corporation supported the action of the respondent no.1. It is submitted that the petitioner was rightly paid the pay that was payable to the Education Officer. It is however fairly stated that normally on promotion to the higher post, the pay that is drawn by an employee on the subordinate post is required to be protected. It is further admitted that even if a larger amount is wrongfully paid, the same cannot be recovered from the pensionary benefits of an employee in view of the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others .vs. Rafiq Masih (Whitewasher)**, reported in (2014) 8 SCC 883.

On hearing the learned counsel for the parties, we find that the respondent-Corporation was not justified in seeking the recovery of a sum of Rs.1,49,804/- from the gratuity that was payable to the petitioner. The respondents could not have reduced the pay of the petitioner after he was promoted to the post of the Education Officer from the post of Headmaster. It is fairly admitted on behalf of the respondents that normally the last drawn pay of an employee, is liable to be protected when the employee is promoted to a higher post. Hence, on the promotion of the petitioner to the post of Education Officer, the pay that was drawn by him as the Headmaster ought to have been protected. In any case, in view of the judgment of the Hon'ble

Supreme Court in the case of **State of Punjab and others .vs. Rafiq Masih (Whitewasher)**, the amount mistakenly paid to the employee in the absence of any mis-representation by him, cannot be recovered after the employee retires from service. In the instant case, the petitioner had retired from service in the year 2015 and, thereafter, the amount of Rs.1,49,804/- was sought to be recovered from the gratuity of the petitioner. The respondent-Corporation was not justified in recovering the said amount from the gratuity of the petitioner.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside. Since the amount is already deducted from the gratuity of the petitioner, we direct the respondent-Corporation to pay the sum of Rs.1,49,804/- to the petitioner, within a period of two months. Needless to mention that the pensionary benefits should be fixed on the last drawn pay. Order accordingly. No costs.

JUDGE

JUDGE