

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

WRIT PETITION NO.5929/2016

Ravi s/o Waman Somkumwar and others

...Versus...

The State of Maharashtra, through the Secretary, Ministry of Social Justice,
Empowerment and Special Assistant, Mantralaya, Mumbai 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 S.G. Karmarkar, Advocate for petitioners
Shri I.J. Damle, AGP for respondent nos.1 to 4
Shri B.R. Deshmukh, Adv. h/f Shri S.A. Khule, Adv. for respondent no.5

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

DATE : 06.12.2016

By this petition, the petitioners challenge the demand notices issued by the respondent no.5, dated 27.9.2016 and 3.10.2016, asking the petitioners to refund the amount that was wrongfully paid to them towards the arrears of the 6th Pay Commission Recommendations, in April, 2016.

Some of the petitioners are working as Class-III and Class-IV (Group-C and Group-D) employees and some of the petitioners have retired from service after attaining the age of superannuation. All the petitioners were paid the arrears of difference in salary as per the recommendations of the 6th Pay Commission in April, 2016 for the years 2006 to 2016 in lump

sum. The Commissioner realized soon thereafter that the amount was mistakenly paid and hence within a few months of the payment, the respondents had issued the impugned notices, asking the petitioners to refund the amount that was wrongfully paid to the petitioners in April, 2016.

Shri Karmarkar, the learned Counsel for the petitioners submitted that the action on the part of the respondents of recovering the amount is contrary to the law, as laid down by the Hon'ble Supreme Court in the case of ***State of Punjab and others...Versus..Rafiq Masih (White Washer) and others***, reported in ***(2015) 4 Supreme Court Cases 334***. It is stated that though it is admitted that the amount is wrongfully paid to the petitioners, the said amount cannot be recovered from them as they belong to Class-III or Class-IV services (Group-C or Group-D services). It is stated that recovery of the amount wrongfully paid, cannot be ordered from the retired employees or Class – III or Class - IV employees. It is stated that since the amount mistakenly paid to Class-III or Class-IV employees or retired employees, cannot be recovered, in view of the judgment, reported in ***(2015) 4 Supreme Court Cases 334***, the impugned notices are liable to be set aside.

On the other hand, it is submitted by the learned Assistant Government Pleader and the learned Counsel for the respondent no.5 that the law laid down by the Hon'ble Supreme Court in the case of ***Rafiq Masih*** (Supra) and in the case of ***Chandi Prasad Uniyal and others...Versus...State of Uttarakhand and others***, reported in ***(2012) 8 Supreme Court Cases 417*** would apply only to the cases, where the amount is

mistakenly or wrongfully paid to an employee for quite some time or more than five years before it is sought to be recovered. It is stated that only in such cases there would be hardship to the concerned employee and hence, the Hon'ble Supreme Court has held that the amount of overpayment, that is, made to an employee in the absence of any misrepresentation by him, cannot be recovered from Class-III or Class-IV employees or the retired employees. It is stated that in the instant case, the entire arrears were mistakenly paid to the petitioners in lump sum in the month of April, 2016 and the said amount is sought to be recovered by the impugned notices, that are issued immediately within 4-5 months after realizing the mistake. It is stated that the case of the petitioners would not be governed by the law, as laid down in the case of *Rafiq Masih*.

On a reading of the judgments of the Hon'ble Supreme Court in the case of *Syed Abdul Qadir and others...Versus...State of Bihar and others*, reported in (2009) 3 Supreme Court Cases 475, *State of Punjab and others...Versus..Rafiq Masih (White Washer) and others*, reported in (2015) 4 Supreme Court Cases 334 and *Chandi Prasad Uniyal and others...Versus...State of Uttarakhand and others*, reported in (2012) 8 Supreme Court Cases 417, it is clear that an amount mistakenly paid to an employee over a period of time without the authority of law, could be recovered, barring a few exceptions where extreme hardship would be caused to the employee. In the case of *Rafiq Masih*, the Hon'ble Supreme Court has categorized the situations in which the recoveries by the employer would be impermissible. It is no doubt true that in view

of the law laid down in the aforesaid judgment, recovery from the employees in Class-III and Class-IV services (Groups C & D), retired employees or employees who are due to retire within one year of the order, cannot be made. However, these principles are to be applied to the cases where the employees have received excess payment for quite some time. It is observed by the Hon'ble Supreme Court in the case of *Rafiq Masih* by referring to the judgment in the case of *Syed Abdul Qadir and others* that when the excess unauthorized payment is detected within a short period of time, it would be open for the employer to recover the same. In the case of *Syed Abdul Qadir and others*, the Hon'ble Supreme Court has observed that the relief against recovery is granted by Courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that would be caused if recovery is ordered. If that be so, in the circumstances of this case, it cannot be said that extreme hardship would be caused to the petitioners, if the recovery is ordered as the petitioners have not received the excess payment every month but in lump sum, just a few months before the notices seeking the refund of the amount were issued. If the submission made on behalf of the petitioners that as a rule recovery can never be ordered from a Class-III or Class-IV employee is accepted, then the recovery of huge payments that are wrongfully made in the previous month, could not be ordered to be refunded in the next month or the month thereafter. For example, if a Class-IV employee is mistakenly paid a sum of Rs.2,00,000/- instead of Rs.20,000/- to which he is entitled, in the month of May, can Rs.80,000/- not be recovered from him in

the month of September or November after realizing the mistake ? In our view, the answer should be in the affirmative. So also, if a retired employee is mistakenly paid a much larger amount, after his retirement towards arrears of salary, then can the amount not be recovered within a couple of months from the date of payment of the amount ? Our answer would again be in the positive. In the case in hand, huge amounts were mistakenly paid to the petitioners and the other employees in lump sum in April, 2016 towards arrears of difference of salary from 1.1.2006 to 31.3.2016 and immediately on realizing the mistake, the Commissioner asked the respondent - College to recover it from all the employees. This is not a case where the petitioners and the other employees were paid higher salary every month by mistake, from 1.1.2006 to 31.3.2016. If that was the case, the same could not have been recovered. In the case like the present one, the right to recover cannot be said to be inequitable or arbitrary.

Since we do not find that the case of the petitioners would be covered by the judgment in the case of *Rafiq Masih*, we dismiss the writ petition with no order as to costs.

JUDGE

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