

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 1961 of 2006

Ramkrishna S/o Narayan Ghuge,
age 47 years occupation service
R/o 7-A "Dnyaneshwari" Samarth Nagar,
Ambad Road, Jalna, Taluka and District Jalna.

... **PETITIONER**

VERSUS

1. The State of Maharashtra
Through: Govt. Pleader Office,
High Court of Judicature at Bombay,
Bench at Aurangabad, for Secretary,
General Administration Department,
Mantralaya, Mumbai – 32.
2. The Secretary,
Rural Development and Water Conservation Department,
Mantralaya, Mumbai – 32.
3. Chief Executive Officer,
Zilla Parishad, Jalna.

... **RESPONDENTS.**

Shri D.R. Irale Patil, Advocate for the petitioner.

Shri A.R. Borulkar, Asstt. Govt. Pleader for respondents No.1 & 2.

Shri A.S. Deshpande, Advocate for respondent No.3.

**CORAM: R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

RESERVED ON : 18th August, 2017.

PRONOUNCED ON : 1st September 2017

JUDGMENT (PER R.D. DHANUKA, J.)

By this petition filed under Article 226 of the Constitution of India, petitioner seeks Writ of Certiorari, inter-alia, for quashing and setting aside the impugned order dated 18th May 2002 passed by the Desk Officer, Rural Development and Water Conservation Department, Mantralaya, Mumbai, 400 032, rejecting the proposal submitted by the Chief Executive Officer, Zilla Parishad, Jalna, for granting exemption under Rule 10 of the Maharashtra Civil Services (Compulsory Marathi Shorthand and Marathi Typing Examinations for English Stenographers and English Typists) Rules, 1991, (for short "The said Rules") to the petitioner from passing the Marathi Shorthand Examination. The petitioner also seeks an order and direction against respondent No.2 i.e. the Secretary, Rural "Development and Water Conservation Department, Mantralaya, Mumbai, to consider the proposal submitted by the Zilla Parishad, vide letter dated 12th February 2002, and to grant exemption to the petitioner from passing Marathi Shorthand Examination under Rule

10 of the said Rules.

2. Some of the relevant facts for the purpose of deciding this petition are as under:

The date of birth of the petitioner is 7th June 1959. He completed the Trade Test in the Trade of Stenography-English 40 / 80 words per minute on 19th July 1981.

3. It is the case of the petitioner that the Zilla Parishad, Jalna, had made a requisition with Employment Exchange for filling of various posts. The name of the petitioner was sponsored by the Employment Exchange to the Chief Executive Officer, Zilla Parishad, Jalna, for the post of Steno Typist. The petitioner was interviewed and was selected by respondent No.3 as a Steno-Typist with an appointment order dated 23rd September 1982. The State of Maharashtra has framed Recruitment Rules i.e. "Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967", for the purpose of appointment of staff on the establishment of Zilla Parishad. Rule 5 of the said Rules of 1967 provides for method of appointment including the qualification and other requirements. Under the Appointment Rules, the prescribed qualification for the post of Steno-Typist was Secondary School Certificate or any

equivalent Examination and that candidate shall possess certificate of speed of not less than 80 words per minute in English or Marathi Shorthand and not less than 40 W.P.M. In English Typewriting and 30 W.P.M. in Marathi Typewriting.

4. The petitioner was confirmed on the initial post held by him under an order dated 16th May 1995 issued by the Zilla Parishad.

5. Sometime in the year 1991, the State of Maharashtra framed the said Rules. Rule 4 of the said Rules provides for the period for passing examination. Rule 4(i), which applies to the facts of this case, is reproduced as under:

“4. Period for passing examination -

(i) The English Stenographer or English Typist, who has passed the Secondary School Certificate Examination with Marathi (Higher Standard) as the first language,

(a) who are already in the service of the Government on the commencement date, shall pass the examination prescribed in Rule 3 within four years from the commencement date;

(b) who are recruited after the commencement date, shall pass the examination prescribed in Rule 3 within four years from the date of joining the Government service.”

6. Rule 4(ii) is relied upon by the petitioner during the course of his argument and is accordingly reproduced as under:

“(ii) The English Stenographer or English Typist who has passed the Secondary School Certificate Examination but not with Marathi (Higher Standard) as the first language.

(a) who are already in the service of the Government on the commencement date, shall pass the examination prescribed in Rule 3 within six years from the commencement date;

(b) who are recruited after the commencement date, shall pass the examination prescribed in Rule 3 within four years from the date joining the Government service.”

7. Rule 8 of the said Rules provide that English Stenographer/Typist shall be exempted from passing the examinations if he/she has attained the age of 50 years on the commencement date or when he/she attains the age of 50 years.

Rule 10 provides as under:

“ Notwithstanding anything contained in these rules, Government may relax provisions of any of these rules, under special circumstances in such manner as shall appear to it to be just and reasonable, and shall record the reasons for any such relaxations.”

8. Rule 2 provides that the said Rules shall come into force on the date of publication of said Notification. Said Notification was published in the Government Gazette on 13th June 1991.

9. On 18th December 1996, the Director of Language, Maharashtra State, Mumbai, issued another Circular prescribing that unless a English Stenographer or English Typist attains 50 years, cannot be exempted from passing Marathi Shorthand and Typing Examination.

10. It is the case of the petitioner that taking into consideration his outstanding career, the Zilla Parishad granted two advance increments to the petitioner under order dated 7th January 2000. It is also the case of the petitioner that on 1st August 2001, the petitioner met with an accident due to which his shoulder joint of right hand had been dislocated and he became helpless for doing any extra work other than the works actually allotted to him in the office by the Zilla Parishad. The case of the petitioner was referred for examination to the Civil Surgeon, Jalna, by the Zilla Parishad. The Civil Surgeon, Jalna, after examining the petitioner, issued a certificate dated 20th March 2002 recommending that the petitioner could not bear additional work due to said accident. It is the case of

the petitioner that in view of the said accident, his right hand could not bear extra work and, thus, the petitioner could not undertake extra efforts to make practice and to get successful in the Marathi Shorthand Examination as required under the said Rules. The Rural Development Department issued an order dated 29th January 1992 and incorporated the said Rules and made applicable to the Zilla Parishad employees.

11. By a letter dated 15th January 2002 the petitioner made a representation to the Zilla Parishad and requested that his proposal may be moved with the Government for getting exemption from passing Marathi Shorthand Examination. It is case of the petitioner that Zilla Parishad thereafter examined the certificate issued by the Medical Authority in favour of the petitioner and submitted a proposal to the Government on 12th February 2002 in compliance with Government Letter dated 27th December 2001 and justified that it was not possible to the petitioner to pass the Marathi Shorthand Examination due to dislocation in his shoulder.

12. By an order dated 18th May 2002, the Desk Officer, Rural Development and Water Conservation Department, rejected the said proposal made by the Zilla Parishad to grant exemption to the

petitioner to appear for Marathi Shorthand Examination. Being aggrieved by the said order dated 18th May 2002 passed by respondent No.2, the petitioner filed this petition for various reliefs.

13. Mr D.R. Erale Patil, learned Counsel for the petitioner, invited our attention to various Annexures to the Writ Petition, including the letter of appointment of the petitioner as Steno Typist and the Rules laying down the qualifications of candidates for methods of appointment to posts included in the District Service (Class III) (Ministerial) and District Service (Class III) (subordinate Ministerial) and, in particular, Rule 6 thereof.

14. It is submitted by the learned Counsel for the petitioner that under the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967, various conditions were prescribed for appointment including the qualifications for appointment to various posts. He submits that the petitioner had already complied with those qualifications prescribed under those Rules 1967, when the petitioner was appointed under order dated 21st September 1982.

15. It is submitted by the learned Counsel that though the petitioner appeared for the Marathi Shorthand and Typing

Examination, the petitioner could not pass the said examination though appeared twice. The petitioner, however, had met with an accident in the year 2001. He submits that case of the petitioner was referred to the Civil Surgeon by the Zilla Parishad to opine that in view of accident, the petitioner was not in a position to bear any additional burden. He submits that based on the said report submitted by the learned Civil Surgeon, the Zilla Parishad had made recommendation to the Government to grant exemption to the petitioner to pass Marathi Shorthand and Typing Examination under the said Rules.

16. It is submitted that respondent No.2 could not have ignored the opinion of the Civil Surgeon and could not have taken a different view while rejecting the proposal for exemption made by the Zilla Parishad. Learned Counsel invited our attention to Rule 4(ii) of the said Rules and would submit that the petitioner could have passed such examination within six years from the date of commencement of the said Rules. He submits that under Rule 10 of the said Rules, in view of the petitioner having been met with an accident and was not able to bear with any additional burden, the petitioner had made out the case of special circumstance under Rule 10 and, thus, respondent No.2 was under obligation to relax the

provisions under those rules prescribing for passing Marathi Shorthand and Typing Examinations by the petitioner. He submits that petitioner could have applied for such exemption under Rule 10 though the petitioner was not successful in those examinations though appeared twice within the period of six years from the commencement date.

17. The learned Counsel for the petitioner invited our attention to Rule 8 of the said Rules, which provides that the English Stenographer/Typist shall be exempted from passing examinations if he/she attained the age of 50 years from the commencement date or when he/she attains age of 50 years and submits that there was a discrimination between the petitioner, who was below the age of 45 years when the said Rules came into force and between the English Stenographers/Typists, who had attained age of 50 years on the commencement of the said Rules.

18. Learned Counsel for the petitioner submits that on 12th July 2016 the petitioner has already taken voluntary retirement from service and amount payable to the petitioner has already been quantified by the Zilla Parishad. He has been also paid various service dues upon the voluntary retirement applied for by the

petitioner and sanctioned by the Zilla Parishad. Learned Counsel invited our attention to the order dated 26th June 2006 passed by this Court while admitting this Writ Petition and granting ad-interim relief in terms of Prayer Clause "D" of the Writ Petition. He submits that by virtue of the said ad-interim relief granted by this Court in terms of Prayer Clause "D", the implementation of the order dated 18th May 2002 passed by respondent No.2 is stayed and simultaneously the Zilla Parishad was directed to relieve the withheld increments to the petitioner. He submits that in view of the said ad-interim relief passed by this Court, which has attained finality in view of the respondents not having impugned the said ad-interim relief passed by this Court, respondent No.3 has released withheld increments to the petitioner till the petitioner took voluntary retirement from his services.

19. It is submitted by the learned Counsel that since the petitioner has already taken voluntary retirement and since respondent No.3 has already released the withheld increments to the petitioner after ad-interim order passed by this Court, even if the petitioner does not succeed in this Writ Petition, respondent No.3 cannot be allowed to make recovery of any amount from the petitioner from the pension amount payable to the petitioner at this stage. He submits that whatever benefit is already accrued to the

petitioner by way of release of withheld increments, which were paid to the petitioner till he was allowed to take voluntary retirement, the same cannot be recovered from the petitioner and, more particularly, from the pension amount payable to the petitioner. In support of this submission, the learned Counsel for the petitioner placed reliance on following Judgments of the Hon'ble Supreme Court.

- (I) **State of Punjab and Others Versus Rafiq Masih (White Washer) and others {(2015) 4 Supreme Court Cases 334},** (Paragraph 18),
- (II) **Purshottam Lal Das and others Vs. The State of Bihar & others (2006 AIR SCW 5325)** (Paragraph 8),
- (III) **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and others {2014(4) ALL MR 909 (S.C.)}** (Paragraphs 11 and 12),
- (IV) **Bihar State Electricity Board and another Vs. Bijay Bhadur and another {(2000) 10 Supreme Court Cases 99}** (Paragraphs 10 and 11)
- (V) Learned Counsel also placed reliance on the judgment delivered by the Division Bench of this Court on 28th February 2017 in case of **Gorakhnath Punjaba Ingle Vs. the Chief Executive Officer and others in Writ Petition No. 8352 of 2015** and, in particular,

paragraphs 5 to 8.

20. Learned Counsel for the petitioner placed reliance on Rule 131 of the Maharashtra Civil Services (Pension) Rules, 1982, and would submit that since the pension amount is already authorized while accepting the voluntary retirement of the petitioner, the Zilla Parishad cannot be allowed to revise the said pension amount by making any recovery of the increments paid by the Zilla Parishad to the petitioner during the pendency of this Writ Petition.

21. Mr A.S. Deshpande, learned Counsel for respondent No.3/Zilla Parishad, on the other hand, submits that the said rules framed in the year 1991 by the State Government in exercise of powers conferred by Proviso to Article 309 of the Constitution of India, prescribing conditions for passing the examination of Marathi Stenography, within the period of four years or six years, as the case may be, was not with retrospective effect but was framed with prospective effect. He submits that no vested rights had accrued, if any, in favour of the petitioner. It is submitted by the learned Counsel that the case of the petitioner does not fall under Rule 4 (ii) viz. prescribing six years period for passing the examination, mentioned therein, in view of the fact that the petitioner had passed

the requisite Secondary School Certificate Examination with Marathi language as the first language. He submits that the petitioner was thus required to pass Marathi Shorthand and Marathi Typing Examinations, within four years from the commencement date and not within six years, as canvassed by the petitioner.

22. It is submitted by the learned Counsel for Zilla Parishad that the period of four years had already expired from the commencement date sometime in the year 1995. He submits that the petitioner had already appeared twice for the said examination within a period of four years from the commencement date, however, failed. He submits that accident of the petitioner had taken place sometime in the year 2001 i.e. after expiry of six years from the date of the petitioner having become disqualified in view of not having passed the required examination within a period of four years from the commencement date. He submits that the petitioner had not become eligible to seek any exemption on the ground of having met with an accident much later. He submits that in any event, the petitioner had not made out any case of special circumstance as set out in Rule 10 for seeking the exemption from passing examination in Marathi Shorthand and Typing.

23. It is submitted by the learned Counsel that though the Zilla Parishad had made a proposal for the exemption of the petitioner under Rule 10 at the relevant time, the Zilla Parishad is not prevented from opposing this petition on the ground that no case was made out by the petitioner under Rule 10 or under any other provision of the said Rules of 1991.

24. In so far as submissions of learned Counsel for the petitioner that respondent No.3 already having made payment of the withheld increments to the petitioner and petitioner having been allowed to take voluntary retirement, the Zilla Parishad cannot be allowed to recover any amount of released withheld increments from the pension amount, is concerned, it is submitted by the learned Counsel that said amount of withheld increments was required to be paid by the Zilla Parishad to the petitioner in view of the interim relief sought by the petitioner in terms of Prayer Clause "D" in the petition, which was granted by this Court to the petitioner. He submits that the said amount of withheld increments paid to the petitioner was not under any mistake on the part of the Zilla Parishad but was paid in view of the interim order passed by this Court.

25. Learned Counsel for Zilla Parishad distinguished various judgments relied upon by the petitioner on the ground that none of these judgments would apply to the facts of this case since the amounts were paid to the petitioner in view of the interim orders passed by this Court and was not because of any mistake. Learned Counsel for Zilla Parishad submits that similarly, Rule 131 of the Maharashtra Civil Services (Pension) Rules, 1982, relied upon by the petitioner also does not apply to the facts of this case in view of the fact that the recovery, if any, required to be made by the respondents from petitioner, is not on account of detection of clerical error subsequently but is because of the petitioner not having made out the case in this petition. He submits that the interim order passed by this Court being subject to the final order passed by this Court, the provision of Rule 131 of the M.C.S. (Pension) Rules, 1982, does not apply to the facts of this case.

26. Mr Borulkar, learned Assistant Government Pleader for respondents No.1 and 2, invited our attention to the impugned order passed by respondent No.2 recording a finding that the petitioner was in a position of discharging his duty in regular course inspite of such an accident and would submit that respondent No.2 was, thus, right in rejecting the proposal of the Zilla Parishad for granting

exemption under Rule 10 of the said Rules in favour of the petitioner. He submits that the petitioner had not made any application for exemption within the period of four years, within which he was required to pass the said examination. He submits that the application for exemption after expiry of four years from the commencement date was, thus, not even maintainable. He submits that Rule 8 of the said Rules would not apply to the facts of this case in view of the fact that petitioner had not attained age of 50 years. He submits that petitioner was working as Stenographer till the date of his voluntary retirement i.e. 12th July 2016 without any problem though he has alleged to have met with an accident in the year 2001. He submits that the findings recorded by respondent No.2 cannot be interfered with by this Court.

27. Mr Irale Patil, learned Counsel for the petitioner in rejoinder submits that the Zilla Parishad itself had recommended to the respondent No.2 for exemption under Rule 10 of the said Rules. The case of the petitioner was referred to Civil Surgeon by Zilla Parishad and, thus, the Zilla Parishad cannot be allowed to take contrary stand. He submits that the petitioner had already taken retirement voluntarily and no permission can be granted by this Court to Zilla Parishad to recover the amount of released withheld

increments, at this stage.

Reasons and Conclusions :

28) It is not in dispute that the petitioner was appointed on 21 September 1982 as a Steno Typist and was in service when the State of Maharashtra framed the rules in the year 1991 prescribing the examination for passing the Marathi Shorthand examination within the time prescribed by the English Stenographer or English Typist. Rule 4(1) provided that the English Stenographers or English Typists who had passed the Secondary School Certificate Examination with Marathi (Higher Standard) as the first language and who are already in service of the Government on the commencement date shall pass the examination prescribed in Rule 3 within 4 years from the commencement date. Rule 2 provided that the said rules shall come into force on the date of publication of the said notification which was on 6 May 1991.

29) It is not in dispute that the petitioner had passed his Secondary School Certificate Examination with Marathi (Higher Standard) as the first language. In our view Rule 4(1) of the said Rules framed in the year 1991 by the state of Maharashtra thus would be applicable to the petitioner and not Rule 4(ii) which

provided for 6 years time to pass such examination. We are thus not inclined to accept the submission of the learned counsel for the petitioner that the petitioner was required to pass such examination within 6 years from the date of commencement of the said rules.

30) It is also not in dispute that the petitioner had already appeared for such examination twice within the said period of 4 years from the date of commencement of the said rules and had failed. It is also not in dispute that on 1 August 2001 i.e. after expiry of 10 years from the commencement date, the petitioner met with an accident. The Civil Surgeon had issued a certificate dated 20 March 2002 recommending that the petitioner will not be able to bear additional work due to said accident. The petitioner continued to work with respondent No.3 and was performing the work of English Stenographer till he took voluntary retirement.

31. In so far as the submission of the learned counsel for the petitioner that the respondent No.3 could not overlook the certificate issued by the Civil Surgeon certifying that the petitioner could not have been burdened with additional work in view of his injury is concerned, in our view there is no merit in this submission of the learned counsel for the petitioner. The petitioner had already appeared for the said examination required to be passed under the

said rules of 1991 twice and had failed within the period of 4 years from the commencement date. The accident of the petitioner had admittedly alleged to have taken place after 6 years from the date of completion of the prescribed period for passing such examination under the said rules of 1991.

32. In our view even if any such accident had taken place resulting in the petitioner suffering from any injury, the said accident had admittedly taken place much after the time prescribed under the said rules for passing the said examination. We, therefore, do not find any infirmity in the order passed by the respondent No.3. In our view since the petitioner had already appeared for the examination prescribed under the said rules of 1991 without any protest, the petitioner cannot challenge the validity of the said rules on the ground that the same were illegal or could not have been made effective with retrospective effect.

33. Be that as it may, in our view the said rules were not made effective with retrospective effect. The said rules provided for sufficient time for appearing in the examination to the petitioner and other candidates. It was not the case of the petitioner that he could not have learnt the Stenography in Marathi within the period of 4

years prescribed under the said rules. He had passed his Secondary School Certificate examination with Marathi as the first language. He had already appeared twice in the said examination but failed.

34) In so far as the submission of the learned counsel for the petitioner that there was discrimination between the petitioner and other candidates who were granted exemption from appearing from such examination if any such candidate had attained the age of 50 years from the commencement date or when such candidate attains the age of 50 years is concerned, in our view there is no substance in this submission of the learned counsel for the petitioner. In our view, considering the age of retirement of such Steno Typist, the condition imposed by the State Government for granting exemption at the age of 50 years was justified.

35) In so far as the submission of the learned counsel for the petitioner that the petitioner could have applied for relaxation of the provision under rule 10 of the said rules though the petitioner had appeared for the examination and had failed within the prescribed period of 4 years under rule 4(i) of the said rules is concerned, in our view there is no merit in this submission of the learned counsel for the petitioner. In our view, a candidate could have applied for

exemption or relaxation from any of the rules prescribed under the said rules including under rule 4(1) for passing examination within 4 years from the date of commencement of the said rules only within the expiry of 4 years prescribed under the said rules and not thereafter. It is not the case of the petitioner that the petitioner had met with an accident within the period of 4 years prescribed under the said rules for passing said examination.

36. It is not disputed by the petitioner that he had already appeared twice within the said period prescribed and had failed. In our view the petitioner was thus not eligible to make any representation for relaxation or for exemption under rule 10 or any of the provisions of the said rules under special circumstances or for any other reasons for seeking exemption from appearing in the said examination. The period prescribed for the examination had already expired long back. In our view, Rule 10 of the Rules for seeking relaxation or exemption from applicability of the said rules was thus itself could not be attracted to the facts of this case.

37. In our view, application for exemption has to be made within the time prescribed for passing examination under Rule 4 and not after expiry of such period even if any special circumstance exists.

Be that as it may, the petitioner had not made out any case showing any special circumstance set out in Rule 10 of the said Rules. Rule 10 has to be read with Rule 4 and cannot be read in isolation. Rule 10 cannot be invoked independently but can be invoked only before expiry of the period prescribed under Rule 4.

38) In so far as the submission of the learned counsel for the petitioner that the petitioner having been already paid the withheld increments in view of the interim relief granted by this Court on 26th June, 2006 and in view of the petitioner having allowed to take voluntary retirement and his amount of pension is already sanctioned and is being paid, the respondent No.3 cannot be allowed to make any recovery at this stage is concerned, the petitioner placed reliance on the four judgments of the Supreme Court and one Judgment of this Court referred to in paragraph 19 of this judgment. Mr. Deshpande, learned counsel for respondent No.3 has rightly distinguished those judgments.

39) In so far as the judgment of the Supreme Court in the case of State of Punjab and Others vs. Rafiq Masih (White Washer) (supra) relied upon by the learned Counsel for petitioner is concerned, the Supreme Court has described the circumstances in which the recoveries from the employees can be impermissible in

law. Paragraphs 18 of the aid judgment reads 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, summaries the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the 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 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."

40) In our view, none of the circumstances set out in the said judgment of the Supreme Court, which would prohibit the employers from making recoveries of any amount from the employee had arisen

in this case. It was not the case of the petitioner that the respondent No.3 had made any excess payment to the petitioner due to any mistake on the part of the respondent No.3. The respondent No.3 had already issued a notice for recovery of the amount from the amount due to the petitioner. The petitioner, however, filed this writ petition and applied for interim reliefs. By an interim order dated 20th June, 2006, passed by this Court, the respondent No.3 was required to release the withheld amount of increments to the petitioner. It is also not the case of the petitioner that the petitioner was due to retire within one year of the order of recovery passed by the respondent No.3 or that the excess payment had been made to the petitioner for the period in excess of 5 years before the order of recovery was passed by the respondent No.3. In our view the said judgment of the Supreme Court in the case of State of Punjab (supra) thus is clearly distinguishable in the facts of this case and would not assist the case of the petitioner.

41) In so far as the judgment of the Supreme Court in the case of *Purshottam Lal Das* (supra) is concerned, the petitioner has placed reliance on paragraph 8 of the said judgment in which the judgment of the Supreme Court in the case of *Bihar State Electricity*

Board and Another v. Bijay Bhadur and Another (2000) 10 SCC 99 is adverted. In the case of Bihar State Electricity Board the Supreme Court had held that if the payments had been made to an employee without any representation or misrepresentation, the employer could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. It was clarified by the Supreme Court that the said order was restricted to the facts of the writ petition only. It was further clarified that Regulation 8 would operate on its own and the Board would be at liberty to take appropriate steps in accordance with law except in the case or cases which had attained finality. In our view this judgment is clearly distinguishable in the facts of this case.

42. The respondent no.3 had not made any payment or had not released increments due to any representation or misrepresentation made by the petitioner but such payment had been released in compliance with the interim order passed by this Court in favour of the petitioner. Thus the judgment in the case of Purshottam Lal Das (supra) would not assist the case of the petitioner.

43) In so far as the judgment of the Supreme Court in the case of Bihar Electricity Board and Another (supra) relied upon by the

learned counsel for the petitioner is concerned, the learned counsel for the petitioner has placed reliance on paragraph 9 in which the Supreme Court has adverted to the judgment in the case of *Sahib Ram v. State of Haryana, 1955 Supp (1) SCC 18* holding that since the payments had been made without any representation or misrepresentation, no amount of recovery could be effected from the payments made to the employer. In our view, the said judgment is clearly distinguishable in the facts of this case in view of the fact that the payment in respect of increment was released in favour of the petitioner in view of the interim order passed by this Court and not based on any representation or misrepresentation made by the petitioner. The said judgment thus would not assist the case of the petitioner.

44) In so far as the judgment of the Supreme Court in the case of Sushil Kumar Singhal (*supra*) relied upon by the learned counsel for the petitioner is concerned, the said judgment would be of no assistance to the petitioner. In the said matter before the Supreme Court, the employer had sought to recover the amount much after retirement of the employee on the premise that there was incorrect fixation of his salary in the year 1986 and the recovery was sought to

be made in the year 2005.

45) In so far as the unreported judgment delivered by this Court on 28th February 2017 in the case of Gorakhnath Punajaba Ingle v. The Chief Executive Officer And Another, in Writ Petition No.8352/2015 (supra) is concerned, this Court had set aside the impugned order passed by the employer reverting the petitioner. With these facts in hand, this Court recorded that it was not disputed that till retirement of the petitioner, he was paid salary of Civil Engineering Assistant and accordingly directed the employer to pay the pension and pensionary benefits to the petitioner in that case. This judgment also thus would not assist the case of the petitioner.

46. In so far as the reliance placed on rule 131 of the Maharashtra Civil Services (Pension) Rules, 1982 by the learned counsel for the petitioner is concerned, a perusal of the said rule indicates that a bar is provided from revision of pension to the disadvantage of the pensioner without the concurrence of the Finance Department if the clerical error of the employer is detected after a period of 2 years from the date of authorization of pension. Even the said rule permits the Government to revise the pension if such revision becomes necessary on account of detection of clerical

error subsequently even after such pension was authorised after final assessment subject to the provision of Rules 25 and 26.

47. In our view, the reliance placed on the said rule by the learned counsel for the petitioner is totally misplaced. The recovery sought to be made by the respondent No.3 in this case is not based on any detection of clerical error sought to be made after 2 years from the date of authorisation of pension but is sought to be made on the ground that the petitioner had not passed the examination of Stenography in Marathi within the time prescribed and was thus not eligible to get the increments. The said Rule, thus, would not assist the case of the petitioner.

48. In our view, the submission of Mr Deshpande, the learned Counsel for the respondent No.3 that the interim order passed by this Court is subject to final order as may be passed in this Writ Petition is correct. In our view, the interim relief granted by this Court in terms of prayer clause (D) in favour of the petitioner is subject to final outcome of this writ petition. Since we are of the view that the petitioner has not made out any case for any relief as claimed in the petition, the petitioner is liable to restore back the benefits availed by the petitioner in view of the interim order passed

by this Court to the respondent No.3. The amount of increment which the petitioner was not entitled to recover is, thus, liable to be returned to the respondent No.3.

49) We, therefore, pass the following order :

- (I) Writ Petition No. 1961 of 2006 is dismissed.
- (II) Rule is discharged.
- (III) Interim relief granted by this Court stands vacated.
- (IV) There shall be no order as to costs.

(SUNIL K. KOTWAL)
JUDGE.

(R.D. DHANUKA)
JUDGE.

pjm