IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5546 OF 2004

1. Smt. Vijaya Pramodkumar Paithankar,
   Age : 46 years, Occu.: Nil,
   R/o.: Partur, Tq. Partur,
   District Jalna

2. Ku. Vaishali Pramodkumar Paithankar,
   Age : 24 years, Occu.: Nil,
   R/o.: Partur, Tq. Partur,
   District Jalna

3. Ashish Pramodkumar Paithankar,
   Age : 22 years, Occu.: Nil,
   R/o.: Partur, Tq. Partur,
   District Jalna

4. Amol Pramodkumar Paithankar,
   Age : 20 years, Occu.: Nil,
   R/o.: Partur, Tq. Partur,
   District Jalna **PETITIONERS**

VERSUS

1. The State of Maharashtra
   Through Secretary of Civil
   Supply, Mantralaya, Mumbai

2. The Commissioner,
   Commissioner Office,
   Aurangabad

3. The Collector,
   Collector Office,
   Jalna

4. The District Supply Officer,
   Jalna

5. The Accountant General
   Account (Pension Divn.) Dept.,
   Nagpur, Maharashtra State **RESPONDENTS**

Mr. V.A. Bagal, Advocate for the petitioners
Mrs.P.V.Diggkar, A.G.P. for respondent Nos.1 to 5

CORAM : T.V.NALAWADE AND SANGITRAO S.PATIL, JJ.

RESERVED ON : 15th JUNE, 2017
PRONOUNCED ON: 11th JULY, 2017

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

The petitioners, who are the legal heirs of the deceased Pramod Sadashivrao Paithankar (hereinafter referred to as "the deceased Paithankar"), have challenged the judgment and order dated 8th August, 2003 passed in Original Application No.445 of 1994 by the Maharashtra Administrative Tribunal, Bench at Aurangabad, ("the Tribunal" for short) confirming the orders dated 28th February, 1994 and 1st March, 1994 passed by respondent No.2 – Divisional Commissioner, Aurangabad directing recovery of Rs.86,514.45 from the pensionery benefits of the deceased Paithankar.

2. The deceased Paithankar was serving as a Godown Keeper for Government Godown at Partur, District Jalna. Respondent No.3 – Collector, Jalna passed nine orders between the years 1987 and 1990 holding the deceased Paithankar responsible for loss of food grains due to his negligence in keeping them in good condition and directed recovery of the total amount of Rs.86,514.45 from the deceased Paithankar. The petitioner challenged the said orders by filing an appeal before respondent No.2, but did not succeed. He, therefore, challenged the orders of respondent No.2 before the Tribunal by filing the above-numbered original application. During the pendency of the said application, he died on 22nd January, 1999. The petitioners got themselves substituted for the deceased Paithankar and prosecuted the application. The Tribunal rejected that application as per the impugned order.

3. The learned counsel for the petitioners submits that respondent No.3 did not conduct any inquiry under the provisions the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, ("Rules of 1979" for short) and without following the principles of natural justice, directed recovery of the above-mentioned amount from the deceased Paithankar. He further submits that as per the Maharashtra Civil Services (Pension) Rules, 1982 ("Rules of 1982" for short), the Government dues as prescribed in sub-rule (3) only can be recovered by the Government from the Government servant due for retirement. He submits that the liability for the loss due to negligence does not fall under sub-rule (3) of Rule 132. Therefore, the above-mentioned amount was not liable to be recovered from the pensionery benefits of the deceased Paithankar. He submits that the impugned orders directing recovery of the above-mentioned amount from the deceased Paithankar are totally illegal. On the basis of

the said orders, petitioner No.1, who is the widow of the deceased Paithankar, could not get family pension. He, therefore, prays that the impugned orders may be set aside and the respondent Authorities may be directed to sanction family pension to petitioner No.1.

4. The learned A.G.P. supports the orders passed by respondent No.3 for recovery of the above-mentioned amount from the deceased Paithankar. He submits that the Tribunal has rightly considered the controversy involved in the matter and rightly upheld the orders passed by respondent Nos.2 and 3. He submits that the amounts sought to be recovered from the deceased Paithankar were towards the loss sustained by the Government due to negligence on the part of the deceased Paithankar in performing his duties as Godown Keeper. He prays that the Writ Petition may be dismissed.

5. As per clause (iii), sub-rule (1) of Rule 5 of the Rules of 1979, recovery from the pay of the Government Servant of the whole or the part or any pecuniary loss caused by him to the Government, by negligence, is a minor penalty. The procedure for imposing minor penalties has been given in Rule 10 (1), which reads as under:-

> **"10. Procedure for imposing minor penalties.-**
>
> (1) Save as provided in sub-rule (3) of Rule 9, no order imposing on a Government servant any of the minor penalties shall be made except after,-
>
> (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;
>
> (b) holding an inquiry in the manner laid down in Rule 8, in every case in which the

disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking into consideration the representation, if any, submitted by the Government servant under Clause (a) of this rule and the record of inquiry, if any, held under Clause (b) of this rule;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission, where such consultation is necessary."

6. The orders passed by respondent No.3 are produced on record. There is absolutely no mention in these orders that the deceased Paithankar was informed in writing of the proposal to take action against him and of the misconduct or misbehaviour of the deceased Paithankar and that he was given a reasonable opportunity to make representation against the said proposal, that respondent No.3 took into consideration the representation, if any, submitted by the deceased Paithankar, and

that respondent No.3 recorded his finding on imputations of misconduct or misbehaviour. The orders passed simply mention that the loss has been caused to the Government in the sum mentioned in those orders because of negligence on the part of the deceased Paithankar and that the amount mentioned in those orders should be recovered from him. There is absolutely nothing on record to show that respondent No.3 had considered the replies filed by the deceased Paithankar and respondent No.3 after considering those replies, recorded his findings on the imputations of misconduct levelled against the deceased Paithankar. Thus, respondent No.3 has passed these orders in total disregard to the provisions of sub-rule (1) of Rule 10 of the Rules of 1979.

7. It is all along the case of the deceased Paithankar that he was not at all negligent in performing his duties as Godown Keeper. A number of orders have been produced on record passed by

respondent No.3 holding the deceased Paithankar not responsible for the loss and writing off the amounts of the alleged loss. It was expected of respondent No.3 to record his specific findings in respect of the charges levelled against the deceased Paithankar. The orders for recovery of the amounts towards loss have been passed without following the due procedure laid down in sub-rule (1) of Rule 10 of the Rules of 1979 and without observing the principles of natural justice.

8. Respondent No.2 also did not take into consideration the deficiencies on the part of respondent No.3 in passing the orders for recovery of money from the deceased Paithankar. The orders passed by respondent No.2 are also very cryptic. There is absolutely no mention as to why the explanation given by the deceased Paithankar was not accepted. Such cryptic orders were not expected to be passed in such serious matters where the deceased Paithankar was held responsible

to pay the amount of Rs.86,514.45.

9. The Tribunal did not attach any importance to the procedure laid down in sub-rule (1) of Rule 10 of the Rules of 1979 while confirming the orders passed by respondent Nos.2 and 3. The Tribunal observed that the deceased Paithankar himself mentioned that he had furnished his explanation to the notices issued by respondent No.3 and therefore, the principles of natural justice cannot be said to have been flouted by the respondent No.3. We are of the view that merely giving notices and seeking explanations of the Government servant would not fulfill the requirements of principles of natural justice. It is expected to pass reasoned orders to show as to why explanations were not accepted. The orders for recovery of money from the deceased Paithankar ought to have been passed as contemplated under sub-rule (1) of Rule 10 of the Rules of 1979. The total disregard to the procedure laid down in this

Rule itself indicates that respondent No.3 did not follow the principles of natural justice.

10. Admittedly, no departmental enquiry was held against the deceased Paithankar. Even the procedure laid down in sub-rule (1) of Rule 10 of the Rules of 1979 also has not been followed. Moreover, in the meantime, Shri Paithankar has expired on 22nd January, 1999. In the circumstances, the impugned orders directing recovery of the above mentioned amount from Paithankar would not sustain.

11. The Writ Petition will have to be allowed. The impugned order passed by the Tribunal will have to be quashed and set aside. The respondents will have to be ordered to process the pension papers of the deceased Paithankar and consider the claim of the petitioner No.1 for family pension. In the result, we pass the following order:-

O R D E R

(i) The Writ Petition is allowed.

(ii) The impugned order passed by the Tribunal is quashed and set aside.

(iii) The respondents shall process the pension case of the deceased Pramod Sadashivrao Paithankar and release the pensionary benefits as well as family pension in favour of petitioner No.1 as expeditiously as possible and preferably within a period of four months from today, failing which the respondents would be liable to pay the amount of pension/family pension with interest at the rate of Rs. 10% per annum from the date of filing of the petition till payment of the entire amount.

(iv) Rule is made absolute on the above terms.

(v) No costs.

[**SANGITRAO S. PATIL**] **[T.V. NALAWADE]**
JUDGE **JUDGE**

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