

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6301 OF 2014

Dadaji Harchand Patil and others .. **Petitioners**

Versus

The State of Maharashtra and others .. **Respondents**

Shri Paresh B. Patil, Advocate for the Petitioners.

Shri P. S. Patil, Addl. G. P. for Respondent No. 1.

Shri Vijay Sharma, Advocate for Respondent Nos. 2 to 6.

WITH

WRIT PETITION NO. 4097 OF 2016

Nandlal Waman Gurav .. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

Shri Paresh B. Patil, Advocate for the Petitioner.

Shri P. S. Patil, Addl. G. P. for Respondent No. 1.

Shri Vijay Sharma, Advocate for Respondent Nos. 2 to 7.

WITH

WRIT PETITION NO. 637 OF 2016

Dilip Shridhar Patil .. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

Shri Paresh B. Patil, Advocate for the Petitioners.

Shri P. S. Patil, Addl. G. P. for Respondent No. 1.

Shri Vijay Sharma, Advocate for Respondent Nos. 2 to 7.

**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATE : 5th October, 2017

PER COURT :

1. Mr. Patil, learned counsel for the petitioner submits that the petitioners are working as 'Helper' Class-IV post. The petitioners in the year-2009 were given the benefit of A.C.P.S. After of lapse of 6 years the respondent recalled the said benefit and directed recovery against the petitioners.

2. The learned counsel submits that the petitioners were given the A.C.P.S. benefit pursuant to the resolution passed by the Zilla Parishad in its meeting, wherein it was decided that the persons to be given A.C.P.S. benefit need not hold the qualification of S.S.C. The learned counsel submits that the order recalling the said benefit is in violation of the principles of natural justice, no notice was given to the petitioners.

3. The learned counsel further submits that even, the recovery could not have been claimed by the respondent. The fixation of pay scale was not done on the basis of fraud or misrepresentation on the part of the petitioners, in view of that, the recovery could not have been claimed from the petitioners also. Learned counsel relies on the judgment of the Apex Court in the case of **State of Panjab and others Vs. Rafiq Masih (White Washer) etc.** reported in **2015 AIR SCW 501.**

4. Mr. Sharma, learned counsel for the Zilla Parishad submits that the petitioners were wrongly given the said benefit of A.C.P.S. In fact, the petitioners were not qualified for the promotional post as they did not possess the S.S.C. qualification. The A.C.P.S. benefit is given only to those persons who are eligible for promotion. As the petitioners were not eligible, the refixation has been done and recovery is claimed, the same is permissible.

5. We have considered the submissions.

6. It is undisputed that the petitioners are working in Class- IV post. The petitioners on completion of 12 years of service in the year 2009 were given benefit of time bound promotional scheme and their pay scale was fixed accordingly. It appears that, after lapse of 6 years the respondent on the premise that A.C.P.S. benefit could not have been awarded to the petitioners have recalled the benefit given to the petitioners and also claimed recovery. The petitioners are not guilty of fraud or misrepresentation. Even the Authority relied upon the resolution passed while extending the A.C.P.S. benefit to the petitioners, the parties were under bonafide belief. The petitioners were not even remotely responsible for the A.C.P.S. benefit given to them, so also, that the petitioners are Clas-IV employees and 2 of the petitioners have already retired it would be inequitable to direct recovery from the petitioners. The

Apex Court in a case of *State of Panjab (supra)* has laid down following principles:

“.....

12. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).***
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.***
- (iii) Recovery from retired 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.”

7. The case of the petitioners is squarely covered by the judgment of the Apex Court and the principles deduced therein.

8. In light of the above, the recovery claimed against the petitioners pursuant to the impugned order is quashed and set aside.

9. It would also appear that the order recalling the benefit already granted to the petitioners 6 years back is passed without notice to the petitioners and without hearing the petitioners. It is the cardinal and fundamental principle that, whenever, an order adverse to the interest of any party is to be passed the principles of audi alteram partem are to be adhered.

10. In light of the above, the impugned order withdrawing the benefit of A.C.P.S. granted to the petitioners is quashed and set aside. The respondent - Authority shall after hearing the petitioner take a fresh decision on the aspect of the eligibility of the petitioners for A.C.P.S. benefit.

11. If any recovery is made pursuant to the impugned order the same be refunded to the petitioners.

12. The writ petitions are accordingly partly allowed in above terms. No costs.

[S. M. GAVHANE, J.] [S. V. GANGAPURWALA, J.]

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