

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

Writ Petition No. 09756 of 2016

District : Dhule

Smt. Shalini w/o. Madanlal Bhavsar,
Age 65 years,
Occupation Pensioner & Household,
R/o. 724-B, near Ganpati Mandir,
Behind Zashi Rani Statue, Shirud,
Taluka & District Dhule.

.. Petitioner.

versus

1. Zilla Parishad, Dhule,
Through its Chief Executive
Officer,
District Dhule.

2. Block Development Officer,
Panchayat Samiti, Dhule,
District Dhule.

.. Respondents.

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Mr. Sachin S. Deshmukh, Advocate, for the petitioner.

*Mr. Rahul S. Pawar, Advocate, for respondent
nos.01 and 02.*

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 02ND MARCH 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. While issuing notice, I had considered the submissions of the learned Advocate for the petitioner and had recorded the same in my order dated 28.09.2016 as follows :—

"01. The petitioner has challenged the order dated 21.10.2015 by filing this petition on 14.09.2016, praying for staying the impugned order.

02. It is submitted that the deceased husband of the petitioner Madanlal Suklal Bhavsar was receiving family pension @ 4,610/-. After he passed away on 21.10.2002, the pension was being paid to the petitioner's wife. Accidentally, from 06.12.2008, the petitioner received an amount of family pension of Rs. 7,566/- per month instead of Rs. 4,610/-.

03. It was noticed in October 2015, that the respondent / Zilla Parishad had inadvertently paid Rs. 3,96,577/- in excess and hence by the impugned order, recovery of the amount by deducting Rs. 5,000/- per month from the family pension has been commenced.

04. The petitioner places reliance upon the view taken by the Hon'ble Supreme Court ***Syed Abdul Qadir and others Vs. State of Bihar and others, 2009(3) SCC 475*** and ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334 = AIR 2015 SC 696***.

05. Issue notice before admission to the respondents, returnable on 25.10.2016. Considering the fact situation as above, and that the impugned order has been challenged after one year, there shall be no interim relief at this stage. Issue of maintainability of this petition is kept open. "

03. Upon my refusal to grant interim relief, the petitioner had approached the Hon'ble Supreme Court in Petition for Special Leave to Appeal (C) No. 36828/2016. By order dated 05.01.2017, the Hon'ble Apex Court dismissed the Special Leave Petition and did not grant any interim relief to the petitioner which she had claimed before this Court.

04. Learned Advocate for the respondent - Zilla Parishad and the Block Development Officer, on instructions, states that his submission can be recorded as under :-

(a) The rule is that, after 07 years of the death of the employee, the pension which is being paid to the legal heir, is reduced from 100 % to 70 %. Consequentially, the pension which the petitioner was receiving till 21.10.2009, would be reduced by 30 % from 22.10.2009 onwards.

(b) By oversight, the above stated reduction was not effected and consequentially, over a period of about 06 years, the petitioner earned Rs. 3,96,577/- in excess which she is not legitimately entitled to.

(c) It cannot be said as on date, that the petitioner has fraudulently acquired excess payment.

(d) The petitioner has herself submitted an application dated 14.10.2015 by way of an undertaking

that in the event, she has received or is receiving excess pension amount, the Zilla Parishad would be entitled to recover the said amount from her in equated monthly instalments and the lowest possible instalment may be settled since the petitioner has to survive in the pension amount.

(e) An amount of Rs. 1500/- per month can be a reasonable instalment and the Zilla Parishad is willing to recover the excess payment from the petitioner by the smallest monthly instalment that is possible.

05. Shri Deshmukh, learned Advocate for the petitioner, has placed heavy reliance upon the judgment of the Hon'ble Apex Court in the matter of ***State of Punjab & others Vs. Rafiq Masih (White Washer) & others*** [(2015) 4 SCC 334]. He draws my attention to paragraph 18 of the judgment of the Hon'ble Apex Court which reads as under :-

" 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 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."

06. There is no dispute that the petitioner has received an excess amount which legitimately does not belong to her and which she cannot legitimately claim. It was by oversight of the respondent that the reduction of the pension as per rules, from 100 % to 70 % was not carried out. Without effecting the reduction by 30 %, the whole amount was being paid to the petitioner from the State exchequer.

07. In a recent judgment delivered by the Hon'ble Apex Court in the matter of **High Court of Punjab and Haryana & others Vs. Jagdev Singh** [AIR 2016 SC 3523], it was concluded by the Hon'ble Apex Court,

that notwithstanding the view taken in **State of Punjab & others (supra)**, if an employee or the beneficiary has issued an undertaking that if the payment is made in excess, same could be recovered or refunded, then the establishment cannot be precluded from recovering the said amount. Paragraphs 11, 12 and 13 of the judgment delivered in the matter of **High Court of Punjab & Haryana & others (supra)** read as under :—

"11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.

13. The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs. "

08. The petitioner herself has tendered an application dated 14.10.2015 which is before the filing of this Writ Petition dated 14.09.2016, that if the Zilla Parishad has noticed any excess payments, they would be at liberty to recover the said amount from the petitioner by settling the lowest monthly instalment. It cannot be ignored that after the petitioner tendered this application on 14.10.2015, the respondent commenced recovery by

instalments from the petitioner. Thereafter, in September 2016, the petitioner has filed this petition.

09. I find that the voluntary undertaking filed by the petitioner on 14.10.2015, agreeing for the recovery of the excess amount can be considered to be a consent for recovering the excess amount. This fact would, therefore, be covered by the view taken by the Hon'ble Apex Court in the judgment delivered in the matter of **High Court of Punjab & Haryana & others** (*supra*).

10. Considering the above, I do not find any reason to stall the recovery of the amount of excess payment. However, the request of the petitioner can be entertained that the lowest possible instalment be settled so that she would get a substantial amount of pension. The statement made by the learned Advocate for the respondent - Zilla Parishad, on instructions, that the instalment could be Rs. 1500/- per month, is accepted.

11. In the light of the above, this petition is partly allowed only to the extent of reducing the monthly instalment of recovery from Rs. 5000/- to Rs. 1500/- per month commencing from March, 2017. The respondent would, therefore, continue to recover the excess amount from the petitioner, however, by settling the monthly instalment at Rs. 1500/-.

12. This petition is partly allowed to the extent set out above and rule is made partly absolute accordingly.

(Ravindra V. Ghuge)
JUDGE

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