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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 2852 OF 2016

Qamrunnisha Mohammed Hashim … Petitioner
Vs.
The Municipal Corporation of
Greater Mumbai & Ors. … Respondents

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Mr. M. . Khan a/w Gautam S. Hiranandani, for the Petitioner.

Mr. Sagar Patil, for Respondent Nos. 1 to 4.

Ms. Jyoti Chagan, AGP for Respondent No. 5.

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CORAM : B. R. GAVAI, &
MANISH PITALE, JJ.

DATE : DECEMBER 4, 2017

<u>ORAL JUDGMENT</u> : [PER : B. R. GAVAI, J.]

1. Heard. Rule. Rule is made returnable forthwith. Learned counsel Mr. Sagar Patil waives service of notice for Respondent Nos. 1 to 4; learned AGP waives service of notice for Respondent No. 5. By consent of parties, petition is taken up for final hearing.

2. The Petitioner has approached this Court, praying for a direction to the Respondent Nos. 1 to 4 to pay an amount of

Rs. 1,56,265/- towards earned leave benefit. The Petitioner also claims interest alongwith the same. The Petitioner was working in the Respondent No. 1 as a Head Teacher and she had retired from the services as a school Teacher in Tardeo Municipal Urdu School, Mumbai, on 1st July, 2005. According to the Petitioner while paying her terminal benefit, amount of Rs. 1,56,265/- has not been paid to her. As such, she has approached this Court.

3. The Respondent Corporation has filed an affidavit in reply in response to the notice issued by this Court. In the said affidavit it is stated that the Petitioner has been paid all terminal benefits. However, insofar as the leave encashment is concerned, it is stated that Petitioner was entitled to Rs. 1,72,565/- towards leave encashment + an amount of Rs. 76,794/- towards 6th Pay Commission arrears = Rs. 2,49,362/-. However, the Petitioner was paid excess amount towards FRZ (DA), amounting to Rs. 70,906/-, and was also paid excessively arrears amount of Rs. 26,343/-. It is therefore, stated that Petitioner was excessively paid total amount of Rs. 97,249/- by Respondent No. 1, and as such, the amount of Rs. 1,08,379 = (Rs. 97,249 + 11,130/- towards income tax) has been deducted from the

outstanding amount payable to the Petitioner. It is therefore, submitted that as such, amount of Rs.1,40,983/- is sanctioned towards leave encashment.

4. It is an admitted position from the affidavit in reply itself that an amount of Rs. 1,08,379/- which is payable to the Petitioner towards leave encashment has been deducted from her entitlement on the ground that she was paid excess amount in the past. By now, it is settled position of law that if an excess amount is paid to an employee on account of erroneous pay fixation, which is not attributable to such an employee, no such recovery would be permissible in law. In this reliance placed on the judgment in the case of *Syed Abdul Qadir & Ors., Appellants Vs. State of Bihar & Ors., Respondents*[1].

. The Apex Court recently in a judgment in the case of *State of Punjab & Ors., Appellants Vs. Rafiq Masih (White washer) & Ors., Respondents*[2] has further held that such a recovery either at the fag end of the career or after retirement of an employee would not be permissible.

5. In view of the above, we find that the recovery of

1 (2009) 3 Supreme Court Cases 475
2 (2015) 4 Supreme Court Cases 334

Rs.1,08,379/- was not permissible in law.

6. Writ petition is therefore, allowed, holding that recovery of Rs. 1,08,379/- by Respondent Nos. 1 to 4 from the Petitioner is bad in law. Respondent Nos. 1 to 4 are directed to pay Rs. 1,08,379/- to the Petitioner alongwith interest @ 6% per annum from the date on which the Petitioner was entitled to receive the said amount. The said amount shall be paid to the Petitioner within a period of four weeks from today. Rule is made absolute in the aforesaid terms with no order as to costs.

Sd/-
[MANISH PITALE, J.]

Sd/-
[B. R. GAVAI, J.]

Vinayak Halemath