IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.383 OF 2011

The Divisional Controller,
Maharashtra Road Transport Corporation
Jalgaon Division, Jalgaon – PETITIONER

VERSUS

Bapurao s/o Maharu Marathe,
Age-Major, Occu-Service,
R/o Plot No.40, Gat No.94/1,
Nimkhedi Shivar, Jalgaon – RESPONDENT

WITH WRIT PETITION NO.3314 OF 2011

The Divisional Controller,
Maharashtra Road Transport Corporation
Jalgaon Division, Jalgaon – PETITIONER

VERSUS

Nagesh s/o Ramkrushna Adgaonkar,
Age-Major, Occu-Service,
R/o 8/47, Shrirang, Shrikrushna
Colony, Near Bajrang Bridge,
Jalgaon, Dist. Jalgaon – RESPONDENT

WITH WRIT PETITION NO.3315 OF 2011

The Divisional Controller,
Maharashtra Road Transport Corporation
Jalgaon Division, Jalgaon – PETITIONER

VERSUS

Arun Ramchandra Pangare,
Age-Major, Occu-Service,
R/o Plot No.1, Gun No.21,

Behind Gujral Petrol Pump,
Jalgaon, Dist.Jalgaon – RESPONDENT

Mr.M.K.Goyanka with Mr.Manoj Shinde, Advocate for the petitioner.
Mr.V.A.Pawar, Mr.P.B.Salunke and Mr.S.S.Patil, Advocates for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 11/12/2018

PER COURT :

1. The petitioner/MSRTC is aggrieved by the identical judgments delivered by the Industrial Court on 24/04/2010 in Complaint (ULP) No.11/2009, 03/09/2010 in Complaint (ULP) No. 13/2009 and 10/06/2010 in Complaint (ULP) No.14/2008.

2. Since the petitioner is the same entity and the respondents in these 3 matters are identically placed, these 3 petitions were taken up together under the orders of this Court.

3. The admitted factors in these 3 cases are as under :-

[a] These petitioners were working as "Clerks/Head Artisan".

[b] They appeared for their departmental examinations prior to 1985 and as they passed these examinations, they were given the particular scales.

[c] The MSRTC has a circular order No.990 which is applicable to promotional posts by virtue of which, higher pay

scales are made applicable to such employees.

[d] The said circular was not applicable to these petitioners.

[e] In 1985, these petitioners were given the advantage of this circular and were granted higher pay scales.

[f] The above anomaly was noticed in the audit conducted in 2007 and the auditor raised objections.

[g] Pursuant to the audit objections, the recovery of excess amounts was initiated in 2008.

[h] Each of these petitioners approached the Industrial Court by filing ULP complaints u/s 28(1) r/w Items 5, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971.

[i] The Industrial Court concluded in the impugned judgments that these workers cannot be faulted and the erroneous fixation of their pay scales rendering them entitled for higher pay scales, was not owing to their acts.

4. Learned Advocate for the MSRTC has strenuously criticized the impugned orders. He submits that these employees do not have a legitimate right for the higher amounts erroneously paid to them by the MSRTC. The petitioner is a public body and which is already running into losses. Even if the petitioner/Corporation may have committed a mistake, the employees were aware that they have been granted higher pay scales out of inadvertence and they should have come forward to point out this fact. If they have remained silent and have accepted such amounts which they were not entitled to, it

would amount to an act of unjustful enrichment.

5. Learned Advocates appearing on behalf of the respondents submit that the employees were in the class-3 categories. They are unaware about the salient features of various pay scales. They appeared for their departmental examinations. Since they cleared the examinations, they were entitled to higher pay scales as a result of passing the departmental examinations. No allegation has been levelled by the Management that these petitioners have either manipulated the records or have resorted to unfair means for gaining higher pay scales. It is not the case of the Management that the grant of higher pay scales pursuant to their success in the examinations, was a fraudulent act of the employees. The Industrial Court, therefore, concluded that the employees cannot be faulted and an audit objection after 22 years would cause grave injustice, hardships and manifest inconvenience to these workers. It is further submitted that this Court admitted these petitions in 2011 and did not grant any stay to the Corporation. The hearing was expedited.

6. Having considered the factors and the admitted facts recorded as above, I do not find that this issue is any longer *res-integra*. The

Hon'ble Apex Court (3 Judges Bench) considered a similar situation in Syed Abdul Qadir and others Vs. State of Bihar and others [2009 AIR SCW 1871] and concluded that when no fault can be found with the employees, there can be no demand for recovery or refund. The appeals were allowed.

7. In State of Punjab and others Vs. Rafiq Masih [White Washer] etc. [2015 AIR SCW 501], the Hon'ble Apex Court has taken up hundreds of cases of such nature and has concluded that unless it is proved that any employee had acted fraudulently, had manipulated the records and had illegitimately acquired excess payments, the employer cannot be entitled to recover the said amounts. It was, therefore, concluded that a payment mistakenly made by the employer and accepted by the employee in the absence of any allegations of fraud, the recovery would be impermissible in the following eventualities :-

> *[1] Recovery from employees belonging to class III and class IV service (or Group 'C' and Group 'D' service).*
>
> *[2] Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
>
> *[3] Recovery from employees, when excess payment has been made for a period in excess of five years before the order of recovery is issued.*

[4] 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.

[5] In another 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 for outweight the equitable balance of the employers right to recover.

8. The Hon'ble Apex Court once again dealt with a similar issue in High Court of Punjab and Haryana and others Vs. Jagdev Singh [(2016)14 SCC 267 = AIR 2016 SC 3523]. The law settled in the case of Syed Abdul Qadir (supra) and State of Punjab (supra) was considered and it was concluded that if a specific undertaking was taken from an employee that he would refund the amount if it is noticed that he was mistakenly paid such an amount, the employer would be entitled to recover the excess payment made.

9. In the cases in hand, neither are any allegations of laches or fraudulent acts have been levelled against these employees, nor has the Corporation taken any undertakings from them that they would refund the amounts which are found to have been paid in excess. So also, an audit objection after 22 years keeping in view that these

employees have now retired, I do not find that the view taken by the Industrial Court could be branded as being perverse or erroneous. In fact, the said view is in consonance with the law laid down by the Hon'ble Apex Court in the above cited cases.

10. These 3 petitions are, therefore, dismissed. Rule is discharged.

(Ravindra V.Ghuge, J.)