

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7630 OF 2014

Dhanraj Damodar Likhar	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. Anilkumar R. Joshi for Petitioner.
Ms Shruti Vyas - 'B' Panel Counsel for State - Respondent
Nos. 1 and 2.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 26 APRIL 2018

P. C. :

- 1] Heard the learned counsel for the parties.

- 2] The challenge in this petition is to the judgment and order dated 20th January 2014 made by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 543 of 2011 instituted by the petitioner.

- 3] The petitioner is the husband of the deceased government servant Smt. Kalavati Dhanraj Likhar, who died

during the pendency of OA No. 543 of 2011. The OA was then pursued by the petitioner and after the same was dismissed, it is the petitioner, who has instituted the present petition.

4] The petitioner's wife was the Registrar, Institute of Printing Technology, Mumbai, until she superannuated from this position on 30th June 2010. On 25th June 2010 an order was made refixing her pay since, the pay fixation done earlier was incorrect. As a result, the petitioner's wife was required to repay excess amount of approximately Rs.90,000/- to the respondents. Since this was not done, the amount, was recovered from the retiral benefits payable to the petitioner's wife. Aggrieved by this action, the petitioner's wife had instituted OA No. 543 of 2011, which was, consequent upon her demise, pursued by the petitioner.

5] Mr. Joshi, the learned counsel for the petitioner submits that the so-called show cause notice dated 25th June 2010 issued to the petitioner's wife was ante-dated. He submits that this is evident because the annexure to this

notice giving the details of alleged excess payment is dated 9th July 2010. He submits that from this, it is quite clear that there was no compliance with principles of natural justice before recovery was effected from the petitioner's wife. He further submits that in terms of the GR dated 30th July 2013 there is an exemption granted for furnishing caste verification certificate and the petitioner's wife was entitled to the benefit of such exemption. He submits that since the MAT has not considered these aspects, the impugned judgment and order made by the MAT warrants interference. He submits that upon consideration of these aspects, the reliefs applied for by the petitioner in the OA are liable to be granted.

6] Ms. Vyas - 'B' Panel Counsel for the respondent nos. 1 and 2 submits that the petitioner's wife was herself in charge of the administration and in such capacity, fixed her pay-scale so as to avail additional increments. When this was discovered, after compliance with principles of natural justice, re-fixation order was made. She submits that the petitioner's wife cannot be permitted to take advantage of her own mistakes by which, she gained considerably. She

submits that this is not a case where the provisions laid down by the Hon'ble Supreme Court in the case of **Syed Abdul Qadir & Ors. vs. State of Bihar & Ors. 2009 AIR SCW 1871** will apply. She submits that the petitioner's wife was not entitled to the benefit of GR dated 30th July 2013 and there is no error whatsoever in the view taken by the MAT. She therefore submits that this petition may be dismissed.

7] At the outset, we find that the petitioner's wife was not covered under the GR dated 30th July 2013. In any case, we are doubtful whether the grant of any such exemption as is contemplated by GR dated 30th July 2013 is consistent with the law laid down by the Hon'ble Supreme Court in the case of **Chairman and Managing Director, FCI & Ors. vs. Jagdish Balaram Bahira & Ors. AIR 2017 SC 3271**, therefore, based upon the GR dated 30th July 2013, it cannot be said that there was any error either in refixing the petitioner's wife's pay or ordering recovery of the excess payment.

8] In the case of *Syed Abdul Qadir* (supra) as well as the

later decision of ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) (2015) 4 SCC 334***, the Hon'ble Supreme Court has held that recoveries may not be ordered if they result in serious hardships to the employees or where the hardships to the employees or where the hardship is of a nature which would far outweigh, the equitable balance of the employers right to recover excess payments. However, the Hon'ble Supreme Court, has made it clear that this will apply to a situation where the excess payment was not on account of any fault attributable to the employees themselves.

9] In the present case, the MAT has held that the petitioner's wife was herself in charge of the administration and in her capacity as in charge, availed of excess benefits, to which, she was not entitled. In such a situation, the petitioner's wife could not have pleaded any equities in the matter of recoveries. Besides, this is a case where recoveries have already been effected and unfortunately, even the petitioner's wife has expired. There is no case made out in such circumstances to order any refund to the petitioner.

10] The MAT, has considered the case of the petitioner in great details and there is no jurisdictional error in the impugned judgment and order.

11] For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA