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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12738 OF 2015

Smt. Yadav Sunita Rajendraprasad

wd/o. Rajendraprasad C.Yadav

..Petitioner.

V/s.

The State of Maharashtra & Ors.

..Respondents.

Mr.C.K.Sadasivam for the petitioner.

Mr.Sandeep Babar, AGP for respondent No.1.

Mr.V.K.Bodhare i/b. Mr.A.M.Joshi for respondent Nos.4 & 5.

***CORAM: SHANTANU S.KEMKAR AND
NITIN W.SAMBRE, JJ.***

DATE : JUNE 5, 2018

PC.:-

The petitioner claims to be the widow of Rajendraprasad Yadav who was working as Junior Clerk with the respondent No.4 New Miraj Education Society. After the death of her husband, the petitioner applied for her appointment on compassionate basis and for family pension and gratuity. While making the payment of gratuity, respondent No.3 Senior Accounts Officer ordered recovery of Rs.1,01,357/- from the gratuity

amount payable to the petitioner on the ground that over-payment of allowance was made to her husband Rajendraprasad Yadav. As regard her request for consideration on compassionate ground, no decision was taken. Feeling aggrieved, the petitioner has filed this petition seeking directions to quash and set aside recovery of amount of gratuity and release the same in her favour and also seeking directions to the respondents to consider and decide her application for appointment on compassionate basis.

2. Respondent No.5 has filed reply and has denied the claim for appointment on compassionate ground.

3. The learned AGP has opposed the prayers.

4. The learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in *State of Punjab and others V/s. Rafiq Masih (White Washer) and others*¹. In paragraph 18 of the said judgment, the Supreme Court has held as under :-

“ 18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of

¹ (2015) 4 Supreme Court Cases 334

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 herein above, 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 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. ”*

5. It is clear from the impugned order of recovery of gratuity amount that the recovery is not on the basis of any alleged

fraud or misrepresentation made by the petitioner's husband, but the recovery has been ordered only on the basis of wrong payment made to the petitioner's husband. In the reply filed by respondent No.5, it is stated that at the time of appointment the petitioner's husband was overaged and, therefore, his appointment was illegal.

6. Having considered the submissions made by the learned counsel for the parties, we find that the petitioner's husband was appointed and allowed to continue in service till his death. After his death, on such a flimsy ground the recovery cannot be ordered from gratuity amount payable to his widow. The petitioner has worked and as a result acquired the right to receive gratuity, the same cannot be denied to his widow on the ground that the petitioner's appointment was illegal as the time of appointment he was overaged. In the circumstances and in view of the law laid down by the Supreme Court in *State of Punjab and others (supra)*, the impugned order being *ex-facie* illegal the same cannot be sustained and as such it is hereby quashed and set aside. The respondents are directed to make payment of deducted / recovered gratuity amount to the petitioner within three months

along with interest at the rate of 9% p.a. from the date of recovery till it is paid.

7. So far as the petitioner's prayer for her appointment on compassionate ground is concerned, we find that respondent No.5 was required to refer the said application to the Competent Authority i.e. the Joint Director of Education for consideration and appropriate decision. It is not in dispute that the said application has not been considered and decided by the Joint Director of Education. In the circumstances, we direct the respondent Nos.4 and 5 to forward the petitioner's application within three weeks for appointment on compassionate ground to respondent No.2 for consideration and for taking appropriate decision in accordance with law. The decision on the said application be taken by the respondent No.2 within three months.

8. With the above directions, the petition is disposed of.

(NITIN W.SAMBRE, J.)

(SHANTANU S.KEMKAR, J.)