

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13254 OF 2019

THE CHIEF EXECUTIVE OFFICER PARBHANI DISTRICT
DEKHREKH SAHAKARI SANSTHA LTD. PARBHANI
VERSUS
VITTHAL GOKULNATHRAO PAWAR AND OTHERS

Mr.S.V.Munde, Advocate for the petitioner.
Mr.N.T.Bhagat, AGP for respondent No.4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 05/11/2019

PER COURT :

1. The petitioner is aggrieved by the judgment and order dated 03/12/2018 delivered by the Labour Court, Nanded by which application (IDA) No.19/2016 preferred by the respondents/workers, has been allowed u/s 33-C(2).

2. The learned Advocate for the petitioner has strenuously criticized the impugned judgment. He relies upon the averments set out in the memo of the petitioner to contend that the pay scales of the respondents were incorrectly fixed. They had put up their pay scales in an incorrect manner and it was by oversight that the petitioner sanctioned the said pay scales and commenced the

payment of the salaries as per the revised pay scale. After 4 years, it was noticed that the pay scales were wrongly fixed and the petitioner therefore commenced the recovery of the excess salary paid.

3. After the excess payment was recovered, the respondents approached the Labour Court u/s 33-C(2) and it was granted by directing the petitioner to pay the legal dues, arrears of leave, difference of gratuity and the illegal deduction amount. The annual increments as well as special increments as were directed by the Industrial Tribunal, Pune by judgment dated 23/11/1998 delivered in Ref.(IT) No.427/1995, were also granted.

4. Despite the strenuous submissions of the learned Advocate for the petitioner, I do not find that this petition deserves to be entertained for the following reasons :-

[a] The judgment delivered by the Industrial Tribunal in Reference (IT) No.427/1975 would amount to an award u/s 2(b) of the I.D.Act, 1947. Being an Award and having not been set aside by any Superior Court, the award has a binding effect and there need not be any further decision on the point.

[b] In so far as the difference in the payment of gratuity is concerned, ordinarily the matter should have gone before the

Controlling Authority under the Payment of Gratuity Act, 1972. However, that does not appear to be an objection raised and therefore the Labour Court merely calculated the difference of amount and issued the necessary direction.

[c] In so far as the annual increments that have been granted with the aid of mathematical calculations by the Labour Court are concerned, the same have their roots in the Award in Reference (IT) No.427/1975 alongwith other reference matters. This has been considered by the Labour Court in paragraph No.10 of the impugned judgment.

[d] In so far as repayment of the amounts recovered is concerned, this issue is no longer res-integra. The Hon'ble Apex Court has dealt with a similar issue of incorrect fixation of pay scales, payment of higher amounts of salary based on incorrect fixation and whether such amounts can be recovered from the employees in the absence of an allegation of fraud. The Hon'ble Apex Court has delivered it's judgments in the matter of State of Punjab and others Vs. Rafiq Masih (White Washer) etc. [(2015) 4 SCC 334 = AIR 2015 SC 696], High Court of Punjab and Haryana and others Vs. Jagdev Singh [(2016)14 SCC 267 = AIR 2016 SC 3523] and Syed Abdul Qadir and others Vs. State of Bihar and others [2009 AIR SCW 1871]. It is specifically held that if it is proved that the beneficiary of enhanced

fixation of pay scale is guilty of a fraud, the amount paid in excess can be recovered. However, in the absence of any such allegation and without proving that the beneficiary has committed a fraud, excess payment made by the Management / Employer, cannot be recovered.

[e] In the instant case, the record reveals that the Chief Executive Officer of the petitioner/Establishment had verified the fixation of pay scale and had sanctioned such pay scale. Based on such sanction by the Highest Authority, the amounts were paid to the concerned employees.

[f] The record also reveals that all the respondents/employees have superannuated in between 2010 and 2015.

5. In view of the above, I do not find that the impugned judgment of the Labour Court would be branded as being perverse or erroneous. This petition, being devoid of merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)