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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4896 OF 2016

Madhukar Annappa Sutar ..Petitioner

vs.

The Registrar, Mahatma Phule Krishi
Vidhyapeeth & anr.

..Respondents

....

Shri Prashant Chawan a/w. Ms. Ruchi Patil i/b. Shri Ravindra
Chile for the petitioner.

Shri Ashish S. Gaikwad for respondents.

....

CORAM : M.S.KARNIK, J.

DATE : 25th APRIL, 2019

P.C. :

Leave to amend. Amendment to be carried out
forthwith.

2. Rule. Rule is made returnable forthwith by consent
of the parties.

3. Respondent No.1 is the contesting respondent. By
this Petition filed under Articles 226 and 227 of the Constitution
of India, the petitioner is assailing the order passed by the

Member, Industrial Court – I in Kolhapur in Complaint (ULP) No. 70 of 2012 passed below Exhibit-U-1.

4. The petitioner filed the complaint (ULP) contending that he has retired from the service of respondent No.1. Post retirement, recovery is sought to be made from him. It appears that the respondents wanted to recover the amount already paid to petitioner which according to the respondents he was not entitled. This the respondent would contend is as a result of wrong pay fixation.

5. Learned Counsel for respondents would point out that ITI training which the petitioner obtained did not entitle him to the pay scale. According to learned Counsel for respondents, the State of Maharashtra raised objection that ITI training certificate which the petitioner obtained is not equivalent to the Government recognized ITI. He would therefore submit that if based on this, the petitioner was placed in higher pay scale, they are justified in recovering the excess payment.

6. Before the Industrial Court the respondents raised objection to the maintainability of the complaint. According to respondents, the complaint is not maintainable as the petitioner is a retired employee and hence, he is not an employee within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. This contention of the respondents was upheld by the Industrial Court. Industrial Court dismissed the complaint on the ground that the same is not maintainable as the petitioner being a retired employee of the respondents cannot be fall within the definition of 'employee' within the meaning of Section 2(s) of the Industrial Disputes Act.

7. Learned Counsel for petitioner relied upon the decision of this Court in the case of **Mahatma Phule Krishi Vidyapeeth Rahuri vs. Ahmednagar Zilla Shet Mazoor Union & ors. reported in (2016) 3 Bom. CR 561**. This Court in paragraph 28 has observed that it is trite law that when certain benefits statutorily available to employees and which are in connection with their terms and conditions of service, are not

paid to the employees after severing of employer-employee relationship or after retirement, there shall be a notional extension of employer-employee relationship between the parties if the workers make a claim for payment of such outstanding benefits invoking Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. I am in agreement with the view taken by the learned Single Judge of this Court.

8. In this view of the matter, the impugned order passed by the Industrial Court holding that the complaint is not maintainable is unsustainable. In ordinary course, I would have remitted the matter back to the Industrial Court for considering the complaint on merits. However, in view of the undisputed position and particularly in the light of the fact that petitioner is Class III employee and it is almost more than 17 years since the petitioner has retired and now he is around 75 years of age, I proceed to deal with the issue on merits in view of the settled position of law.

9. The respondents initiated action of recovery of excess payment based on wrong fixation of pay scale. It is not as if there was any mis-representation on the part of the petitioner or that the petitioner misled the respondents for placing him in a particular pay scale. As the position then stood, the petitioner on passing ITI from an Institution belonging to the respondents that he was placed in the appropriate pay scale. It is only long after his retirement that an objection was raised by the State Government as regards the entitlement of an employee to be placed in a particular pay scale only upon his passing ITI from a Government recognized ITI. In this view of the matter, long after petitioner's retirement, the respondents would not be justified in effecting a recovery. The present fact situation is squarely covered by the decision of the Hon'ble Supreme Court in the case of **State of Punjab & ors. vs. Rafiq Masih (White Washer) & ors.** reported in (2015) 4 SCC 334.

10. Learned Counsel for the respondents relied upon the decision of the Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana and ors. vs. Jagdev Singh** reported in

(2016) 14 SCC 267 to contend that in certain situation excess payment can always be recovered. However, I find that this decision is not applicable to the facts of the present case as this is not a case where an undertaking was specifically furnished by the petitioner when his pay was initially revised accepting that any excess payment found would be liable to be adjusted.

11. Learned Counsel for the respondents would submit that the petitioner has given an undertaking at the time of his retirement that if any amount due and payable from him, the same can be recovered by the respondents. He relied upon Rule 134(a) of the Maharashtra Civil (Pension) Rules, 1982 in support of his submission. However, the said undertaking cannot enure to the benefit of the respondents as this is a usual undertaking taken from every employee at the time of retirement. It is not the case of the respondents that when the pay scale was fixed, the same was granted on the condition that if it is later found that the petitioner is not entitled for said pay scale then excess amount can be recovered.

12. In this view of the matter, the present Petition deserved to be succeed.

13. The Complaint (ULP) stands allowed and the order of recovery is quashed and set aside.

14. If the amount is recovered, the same shall be refunded if not already refunded. Learned Counsel for the respondents fairly states that such amount in fact has been refunded as stated in the Affidavit, more particularly at page 60 in paragraph 9 of the paper-book.

15. It is made clear that the present order is passed in the peculiar facts of this case and shall not treated as a precedent.

16. The Writ Petition is allowed.

17. Rule is made absolute with no order as to costs.

(M.S.KARNIK, J.)