IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6639 OF 2015

Smt. Vidya Vasant Bhadane	]
Retired Nurse Midwife	]
R/o. Plot No.6, Gulmohor Colony,	]
Sadarbazar Satara,	]
Tal. Dist. Satara	].. Petitioner
Vs.	
1. The State of Maharashtra	]
Through the Secretary,	]
Rural Development Dept.	]
Mantralay, Mumbai 32	]
	]
2. The Chief Executive Officer,	]
Satara Zilla Parishad, Satara	]
	]
3. The District Health Officer	]
Satara Zilla Parishad, Satara	]
	]
4. The Senior Accounts Officer,	]
Satara Zilla Parishad, Satara	].. Respondents

Mr.Nitesh V. Bhutekar a/w. Mr.S.D. Joshi, Advocate for petitioner.

Mr.P.G. Sawant, AGP for respondent No.1.

Mr.U.P. Warunjikar a/w. Mr.S.A. Pilankar, Advocate for respondent Nos.2 to 4.

CORAM : B.R. GAVAI &
N.J. JAMADAR, JJ.

DATE : 13th FEBRUARY 2019

JUDGMENT (PER N.J. JAMADAR, J.) :

1. Rule. Rule is made returnable forthwith and by consent of parties, taken up for final hearing.

2. By this petition, the petitioner has sought a relief in a nature of declaration to treat service from 25th February 1984 till 30th November 2013 as service rendered without break and revise the pension as per Government Resolution, dated 5th February 1990 and Section 249 of Maharashtra Zilla Parishad and Panchayat Samities' Act, 1961 ('the Act'). The petitioner has further prayed that the amount of Rs.7,51,622/- recovered from the petitioner be declared as illegal.

3. The petitioner had joined the respondent No.2 as a Nurse on 13th February 1984. The petitioner retired on 30th November 2013, after putting in a service of around 29 years 9 months. Thereafter, vide the order dated 29th March 2014, the respondent No.2 directed, *inter-alia,* that an amount of Rs.7,51,622/- be recovered from the petitioner as the salary of the petitioner (paid to the petitioner while she was in service) was wrongly computed.

4. The petitioner asserts that there was no fraud or misrepresentation on her part. The Government had regularized the services of the persons who were given break in service in terms of the Government Resolution, dated 5th February 1990, and in accordance with the provisions of Section 249 of the Act. After the retirement of the petitioner, the direction of the respondent No.2 to fix the pension of the petitioner on the lower side and

recover the huge amount of Rs.7,51,622/- from the petitioner was iniquitous and totally unjustified.

5. The respondent No.2 had resisted the claim of the petitioner by filing an affidavit of Dr.Kailas Laxman Pargaonkar, Administrative Officer, Health Department, Zilha Parishad, Satara, affirmed on 6th December 2017. From the perusal of the reply, it becomes evident that there are no averments to the effect that the computation of the salary paid to the petitioner was on account of any fraud or misrepresentation on the part of the petitioner. In paragraph 4 of the affidavit in reply, it is stated that the decision, which was taken by respondent No.2 to regularise the services from the year 1982, was contrary to the Government Resolution, 5th February 1990. Thus, the respondent No.2 decided to recover the amount from the petitioner.

6. We have heard Shri Bhutekar, the learned counsel for the petitioner, Shri Sawant, the learned AGP for respondent No.1-State, and Shri Warunjikar, the learned counsel for respondent Nos.2 to 4.

7. Though the petitioner has claimed multiple reliefs, during the course of arguments, the petitioner has restricted her claim to the terminal benefits, and not pressed for the relief of declaration. The learned counsel

for the petitioner urged that the impugned direction for recovery of the amount and substantial reduction in the pension after putting in almost 30 years of service without any fault on the part of the petitioner is unsustainable, in law and equity as well.

8. In contrast, Shri Warunjikar, the learned counsel for the respondent Nos.2 to 4 vehemently opposed the petition and urged that the respondent Nos.2 to 4 have rightly fixed the pension. It was submitted that the petitioner cannot claim retiral benefit more than that to which she is legally entitled to. An incorrect calculation does not confer any right upon the petitioner to get undue benefit, urged the learned counsel for respondent Nos.2 to 4.

9. From the perusal of the material on record, it becomes abundantly clear that the petitioner has rendered service of almost 30 years and she retired from service on 30th November 2013. The impugned communication came to be issued on 30th June 2014. Evidently, the respondent No.2 proceeded to recover the amount from the petitioner after she retired from the services. The petitioner was serving on a Class-III/Group 'C' post. The material on record further indicates that there was no intentional misrepresentation on the part of the petitioner. The respondent No.2, *albeit,* on the representation, had fixed the salary which was later on found

to be on a higher side.

10. It is well recognised that recovery from the employees, who are on the verge of retirement, and who have retired from the service, is rather iniquitous in nature since the retired employees find it hard to meet the rising cost of living. The Hon'ble Supreme Court, in the case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.*** [1], has, after considering various pronouncements in this field, culled out the situations wherein the recoveries from the employees of the amounts paid in excess of their entitlement would be impermissible in law. Paragraph 12 of the said judgment enumerates those situations. It reads as under :-

> *"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of 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*

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> *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."*

11. We find that the case at hand is covered by clauses (i), (ii) and (iii) of the aforesaid prescription.

12. In that view of the matter, the action on the part of the respondent No.2 to recover an amount of Rs.7,51,622/- from the petitioner is found to be impermissible as well as unjustifiable. Hence, we are persuaded to allow the petition partly.

13. The petition is partly allowed.

The direction for recovery of the amount of Rs.7,51,622/-, passed vide order dated 30th June 2014 is quashed and set aside.

The said amount of Rs.7,51,622/-, if already recovered, be refunded to the petitioner, within a period of two months from today.

The direction of fixation of pension as well as the other terminal dues under the said order is also quashed and set aside. The pension of the petitioner be fixed on the basis of the last drawn salary. The other retiral benefits be also paid to the petitioner after considering the last drawn salary as the basis of computation.

The rule is made absolute in the above terms.

[N.J. JAMADAR, J.] **[B.R. GAVAI, J.]**