

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION (STAMP) NO. 35126 OF 2016

Shri Baban Sahadu Thok & Ors. .. Petitioners
Vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Sachin Gite for the Petitioners.
Mr. M. M. Pabale, AGP for Respondent No.1 -State.
Ms. Chaitrali A. Deshmukh for Respondent No.2.

CORAM : PRADEEP NANDRAJOG, C.J. &
N. M. JAMDAR, J.
DATE : 11th JUNE, 2019.

P. C. :

1. In spite of service being effected, counter-affidavit has not been filed. Request made for further time to file counter-affidavit is declined.
2. The Writ Petitioners retired holding post either of Deputy Teacher, Head Master or Education Development Officer. They retired in the year 2004-05. They received pensions which were revised from time to time. The Petitioners approached this Court when on 13.12.2016 they received notices directing recovery to be made from them alleging excess pension paid to them.

3. The notices do not disclose the period for which excess pension allegedly was paid. The notices do not contain reason as to why the department is of the opinion that excess pension was paid.
4. It is pleaded in the Writ Petition that the notices were issued without any hearing being granted to the Writ Petitioners.
5. Prayer made in the Writ Petition is to quash the notices.
6. In a Judgment reported as State of Punjab & Ors. etc. Vs. Rafiq Masih (White Washer) etc. (2015 (4) SCC 334), in paragraph 12, five directions were issued by the Supreme Court listing when it would be impermissible in law to effect recoveries. As per direction No.(ii), no recovery can be effected from a retired employee or employees who are due to retire within one year. As per direction No. (iii), no recovery can be made where alleged excess payment has been made for a period in excess of five years before the order of recovery.
7. Since the impugned notices do not specify the period during which excess payment has been made, the Petitioners would be entitled to relief in respect of directions issued by the Supreme Court because all of them have retired. The second reason which entitles the Petitioners to relief is that the impugned notices annexed as Annexure 'B' which are all dated 13.12.2016 were not preceded by any notice to the Petitioners.

8. Noting that the operation of the impugned notices has been stayed by this Court, we dispose of the Petition quashing the impugned notices dated 13.12.2016 and we do not permit the Respondent to issue show cause notices to the Petitioners to respond as to why the recovery be made for the reasons even if excess payments were made, directions in Rafiq Masih's case would prohibit recovery because Petitioners superannuated over 14-15 years ago.

[N. M. JAMDAR, J.]

[CHIEF JUSTICE]