

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

38 WRIT PETITION NO.1179 OF 2020

SAIRABI SHAIKH SATTAR PINJARI
VERSUS
THE CHIEF EXECUTIVE OFFICER ZILLA PARISAHD JALGAON AND OTHERS

...

Advocate for Petitioner : Mr Bolkar Yogesh B
Advocate for Respondents 1 to 4: Mr Maheshkumar S. Sonawane

CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.

DATE : 20th January, 2020

ORDER:

1. Mr. Bolkar, learned counsel for the petitioner submits that the recovery is effected from the monetary benefits payable to the petitioner under the impugned order dated 22.1.2018. The learned counsel relies on the judgment of the Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others reported in 2015 (4)**.

2. The learned counsel submits that the petitioner is dead and is represented by Legal Heirs. The recovery also cannot be claimed for a period prior to five year. No misrepresentation was made by the deceased petitioner at any material point of time.

3. Mr. M.S. Sonawane, learned counsel for respondents submits that the petitioner was supposed to complete MS-CIT within a stipulated period. The said period was also finally extended up to 31.12.2007. However, the petitioner did not complete the same. In view of that increments granted from 1.1.2008 to 31.07.2015 have been rightly

recalled. The deceased-petitioner is liable for the same.

4. The case of the deceased-petitioners does not come within the ambit and purview of wrong pay fixation. The increments were granted to the deceased-petitioners on the ground that the deceased-petitioners shall complete MS-CIT within the stipulated period. The deceased-petitioners failed to complete the same. In view of that, the respondents were within their powers to withdraw the benefit given to the petitioner.

5. However, it would appear that the employee is dead and is now represented by the L.Rs. It is only on the ground that deceased employee is dead and it would be inequitable to recover the amount from the L.Rs., we have entertained the petition.

6. Considering the facts that hardship would be caused, if the recovery is made from the L.Rs of the deceased employees. The L.R. is the widow doing household work and son is taking education. Only on the ground of equity and facts and circumstances of these cases, we have entertained the petition.

7. In the result, the impugned order to the extent of recovery only is quashed and set aside. Recovery shall not be claimed regarding the salary already paid. However, pay fixation will be done considering the order that the deceased employee had not completed MS-CIT within a stipulated period.

8. In case, the recovery is already made by the respondent, the same shall be repaid / refunded to the petitioner preferably within a period of three (3) months.

9. The Writ Petition is disposed off.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC