

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

979 WRIT PETITION NO. 3370 OF 2020

ASHABAI RAJENDRA ZODAGE
VERSUS
THE CHIEF EXECUTIVE OFFICER,
ZILLA PARISHAD, JALGAON AND OTHERS

...

Advocate for Petitioner : Mr. Bolkar Yogesh B

Advocate for Respondents : M. S. Sonawane

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

DATE: 27th FEBRUARY, 2020

PER COURT:

1. Mr. Bolkar, learned counsel for the petitioner submits that the recovery is claimed under the impugned order dated 07.07.2017. 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) supreme Court cases 334*.

2. The learned counsel submits that the husband of the petitioner is dead and represented by legal heir. The recovery also cannot be claimed for a period prior to five years. No misrepresentation

was made by the deceased husband of the 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 upto 31.12.2007. However, the petitioner did not complete the same. In view of that, increments granted from 01.01.2008 have been rightly recalled. The deceased husband of the petitioner is liable for the same.

4. The case of the deceased husband of the petitioner does not come within the ambit and purview of wrong pay fixation. The increments were granted to the deceased husband of the petitioner on the ground that the deceased husband of the petitioner shall complete MS-CIT within the stipulated period. The deceased husband of the petitioner 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 legal representative. It is only on the ground that deceased employee is dead and it would be inequitable to recover the amount from the legal heir, we have entertained the petition.

6. Considering the facts that hardship would be caused, if the recovery is made from the legal representative of the deceased employee. The legal representative is a widow doing household work. Only on the ground of equity and facts and circumstances of the case, we have entertained the petition.

7. In the result, the impugned order to the extent of recovery only is quashed and set aside. The amount of recovery as claimed under the impugned order shall not be withheld. However, pay fixation will be done considering the order that the deceased employee had not completed MS-CIT within the 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 (03) months.

9. Writ Petition is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

[S. V. GANGAPURWALA, J.]

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