

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4173 OF 2018

Rangrao s/o Mersing Jadhav,
Age : 59 years, Occupation : Pensioner,
R/o Kamthala, Tq.Kinwat,
District Nanded.

...PETITIONER

-VERSUS-

- 1) The State of Maharashtra,
through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
- 2) The Chief Executive Officer,
Zilla Parishad, Nanded.
- 3) The Block Development Officer,
Panchayat Samiti, Kinwat,
Tq.Kinwat, District Nanded.

...RESPONDENT

...
Advocate for the Petitioner : Shri Kulkarni Girish N. (Mardikar)
AGP for Respondent 1 : Shri P.S. Patil
Advocate for Respondents 2 and 3 : Shri Pulkundwar Santosh B.

...

CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 04th August, 2021

Oral Judgment (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard

finally by the consent of the parties.

2. By this petition, the petitioner has put forth prayer clauses B and C as under :-

- “(B) By issuing writ of certiorari and or order in like nature impugned order dated 31.01.2017 bearing Mo.4092-2017 issued by the respondent No.2 thereby revising pay of the petitioner may kindly be quashed and set aside.*
- (C) By issuing writ of mandamus respondents be directed to refund an amount of Rs.3,46,931/- (three lacs forty six thousand nine hundred thirty one only) along with interest to the petitioner within stipulated period.”*

3. The petitioner has preferred this petition on 09.04.2018 for challenging the impugned order dated 31.01.2017 by which, an amount of Rs.3,46,931/- along with interest, is sought to be recovered from him..

4. The contentions of the petitioner can be summarized as under :-

(a) The petitioner had no role to play in the fixation of his pay scale as per the 5th and 6th Pay Commission's recommendations.

(b) The Block Development Officer was the person, who prepared the fixation of pay scales.

(c) The petitioner was appointed as a Peon on

08.11.1983 and he superannuated from service on 31.08.2017.

(d) He was the Junior Administrative Officer (Superintendent) on the date of his superannuation.

(e) On 05.10.2013, the Block Development Officer noticed discrepancy in the pay scale structuring of the petitioner and brought it to the notice of the Zilla Parishad that the petitioner is being paid excess salary since 01.04.2010 till 31.08.2013.

(f) Reasons are not stated as to why the Zilla Parishad did not act on the communication issued by the Block Development Officer.

(g) Seven months prior to his retirement, the impugned notice directing refund of excess amounts paid to him, was issued.

(h) The said amount has been recovered from the petitioner from his retiral benefits as the said amount was not refunded by the petitioner over a period of seven months prior to his retirement.

(i) The petitioner is not at fault and he has not played any fraud.

(j) The judgment delivered by the Honourable Supreme

Court in the case of *State of Punjab and others vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334*, is relied upon in support of the claim that no recovery can be made from the petitioner after his retirement.

(k) The petitioner has obtained a certificate from the succeeding Block Development Officer on 29.08.2018 by way of a declaration indicating that one Shri G.S.Margamwar, Senior Assistant Establishment-1, was working in the Panchayat Samiti, Mahur from January, 2011 till the date of issuance of the certificate.

5. The learned advocate appearing on behalf of respondent Nos.2 and 3/ Zilla Parishad relies upon the affidavit in reply filed on 30.07.2018 by the Block Development Officer on behalf of respondent Nos.2 and 3. It is narrated that the petitioner was promoted and posted at Panchayat Samiti, Mahur as the Superintendent w.e.f. 02.01.2010. Before his promotion, his pay scale was Rs.5200-20200 with Grade Pay Rs.2400 as on 01.01.2010. His salary as on 01.01.2020 was Rs.8700/-. His pay scale for the post of the Superintendent was Rs.9300-34800. It is further submitted that after making proper pay fixation, the

petitioner was entitled to receive the payment of Rs.13500/-. As against this, he wrongly received payment as per the pay scale of Rs.10950+330+4200=15480/- on 02.01.2010, pursuant to the order dated 23.06.2011.

6. It is then submitted in the affidavit that the petitioner was working as the Superintendent at Panchayat Samiti, Mahur and he manipulated his fixation (wrong) of pay scale by mentioning his scale as 10950+330+4200 instead of the pay scale of Rs.9300-34800 with Grade Pay of Rs.4200. He himself was involved in the process of fixation of his pay scale. His signature appeared on the file of the pay fixation and by adding more amounts, he inflated his pay scale. In his capacity of being a Superintendent, he was in a position to manipulate his pay scale and therefore, the law laid down by the Honourable Supreme Court in ***Rafiq Masih (supra)*** would not be applicable to his case.

7. It is then submitted that respondent No.3 noticed the inflation of the pay scale made by the petitioner and issued the order dated 05.10.2013 thereby, correcting the pay scale that the petitioner had instrumentalised by the order dated 26.03.2011. By virtue of this order dated 05.10.2013, the correct pay scale of the petitioner was fixed and he started receiving reduced pay scale

without any murmur or protest. He realized that his fraudulent act was exposed while being in service (four years prior to his retirement and within two years of the fraud that he had played) and therefore, the petitioner did not challenge the revised pay scale order dated 05.10.2013.

8. The learned advocate for respondent Nos.2 and 3 further points out that an undertaking clause was written by the Block Development Officer in the order dated 23.06.2011 containing the inflated pay scale that was prepared by the petitioner. It was clearly mentioned in Marathi that if any objection is raised or any mistake is noticed in the fixation of pay scale, the beneficiary undertakes to return the excess amount that he may have received by virtue of such inflated pay scale. The signature of the petitioner, undisputedly, appears at two places on the order dated 23.06.20211 in which, his pay scale was inflated. His involvement in fixation of inflated pay scale is apparent. Reliance is placed upon the judgments delivered by the Honourable Supreme Court in *Chandi Prasad Uniyal and others vs. State of Uttarakhand and others*, AIR 2012 SC 2951 and in *High Court of Punjab and Haryana and others vs. Jagdev Singh*, (2016) 14 SCC 267.

RELEVANT FACTORS

9. Considering the contentions of the litigating parties, we find that the following factors convince us in taking a view against the petitioner :-

(a) The petitioner was the Superintendent in the Panchayat Samiti, Mahur when the inflated pay scale was fixed by the order dated 23.06.2011.

(b) His signatures appearing besides the signatures of the Block Development Officer at two places indicate his involvement and acceptance of the undertaking.

(c) The Superintendent in the office of the Panchayat Samiti is the person, who provides factual details to the Block Development Officer in matters of pay fixation.

(d) After the Block Development Officer noticed the mischief, he issued the order on 05.10.2013, which is within two years and 03 months of the wrong fixation order and directed the correction of the pay scale of the petitioner. This order was passed 04 years prior to the superannuation of the petitioner.

(e) The petitioner did not challenge the order dated 05.10.2013 by which, the inflated pay scale was set aside and he was granted actual pay scale to which he was entitled to.

(f) Even after the passing of the order dated 05.10.2013, which contains a direction to the petitioner to return the excess amount that he had earned, the petitioner did not refund the amount for four years.

(g) By disobeying the orders of the Block Development Officer and despite his fraud having been exposed, the petitioner did not return the excess amount that he had received by his own wrong doing and this indicates dishonesty of the petitioner.

(h) Till the petitioner superannuated on 31.08.2017, he did not refund the amount.

(i) The impugned order for recovery of the amount (second order) was issued on 31.01.2017, which is 07 months prior to the superannuation of the petitioner. Yet, he did not return the excess amount despite the directions dated 05.10.2013 and 31.01.2017.

(j) The petitioner shrewdly did not challenge the order dated 31.01.2017 by approaching this Court, fearing that his fraud would be exposed. He approached this Court on 09.04.2018, which is six months after his superannuation to take the defence that the law laid down in *Rafiq Masih (supra)* of no recovery post retirement, was applicable to him.

10. Considering the above factors, we have no doubt that this case is an example of a fraudulent behaviour and mischievous conduct of the petitioner. The law crystallized by the Honourable Supreme Court in *Chandi Prasad Uniyal (supra)* and *Jagdev Singh (supra)*, clearly applies to this case.

11. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps (S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)