

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

28 WRIT PETITION NO.7948 OF 2020

Shekawat Shoukat Tadv

Age : 61 years, occ : pensioner

R/o Nimbayati, Taluka Soygaon,

District Aurangabad.

Petitioner

Versus

1. The State of Maharashtra
Through Secretary, Rural
Development and Water
Conservation Department,
Mantralaya, Mumbai – 32.

2. The Chief Executive Officer,
Zilla Parishad, Aurangabad.

3. Chief Accounts and Finance
Officer, Zilla Parishad,
Aurangabad.

4. The Block Development Officer,
Grade-I, Panchayat Samiti,
Soygaon, Dist. Aurangabad.

Respondents

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Mr. D.R. Irle Patil, Advocate for the petitioner.

Mr. S.K. Tambe, A.G.P. for respondent No. 1.

Mr. Shrimant Mundhe, advocate for respondent Nos.2 to 4.

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CORAM : **RAVINDRA V. GHUGE &
AVINASH G. GHAROTE, JJ.**

DATE : 28-06-2021.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put-forth prayer clauses 'B' and 'B-1' as under :

"B. The Hon'ble Court may be pleased to quash and set aside the impugned order dated 29.5.2008 passed by respondent no. 2 and 3 and direct them to convert this leave period into admissible leave and pay the leave salary admissible to the petitioner and also count this period for pensionary benefits.

B-1. Quashing and setting aside the impugned order of recovery dated 14.9.2020 issued by respondent no. 3 and order dated 24.9.2020 issued by respondent no. 4 and provide a pensionary benefits as admissible since retirement date 31.1.2018.

3. A short issue has been raised in this petition. The petitioner is said to have availed medical leave from 01.07.2005 to 02.01.2006. This leave was subsequently disallowed and was considered as absence from service. However, based on the leave, an increment was also granted. The petitioner superannuated on 31.01.2018. Thereafter on 24.09.2020, respondent No. 4 issued an order concluding that the salary paid to the petitioner for 186 days, which is the leave period, needs to be recovered and as the salary was paid to him, he was held entitled to an increment which was paid and, hence, that amount should also be recovered. The total recovery is for an amount of Rs. 1,49,946/-.

4. The learned Advocate representing respondent Nos.2, 3 and 4 submits that there is no allegation against the petitioner that he had played a fraud with the employer or had misled the employer so as to earn an increment. It is further submitted that the petitioner's leave for 186 days was subsequently disallowed. By that time, obviously, he had availed of the leave. He had not earned his wages, but, was granted an increment. It is conceded that, from January 2006 till January 2018, for a period of 12 years, no recovery was proposed against the petitioner, in as much as, recovery was sought to be initiated only by the impugned communication dated 24.09.2020 which was based on an order dated 29.05.2008, by which, the admissible leave was disallowed. It is further conceded, on instructions, that the petitioner had not tendered any undertaking while availing of the leave or the increment so as to indicate that if the leave was subsequently disallowed, he would have to refund the amount of salary received by him for the said period.

5. We find from the prayer clause 'B' set out in this petition, that the petitioner intends to challenge the order dated 29.05.2008 by which he prays that his leave period be converted into admissible leave and he be paid outstanding leave salary for 186 days as may be admissible. Since this petition was filed in October 2020 and the petitioner had not posed any challenge to the order dated 29.05.2008 for 12 years, we are not inclined to entertain this petition after 12 years and 5 months to the extent of the order dated 29.05.2008. Prayer clause 'B' is, therefore, rejected.

6. In the peculiar facts and circumstances of the case and keeping in view the law laid down by the Hon'ble Apex Court in the matters of ***State of Punjab vs. Rafiq Masih (White Washer), (2015) 4 SCC 334*** and ***Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475*** and that the petitioner has superannuated and since he has admittedly not played any fraud on the employer by virtue of which he was paid his increment, we do not find that the impugned orders dated 14.09.2020 and 24.09.2020 could be sustained.

7. This petition is, therefore, partly allowed in terms of prayer clause B-1. The petitioner's pensionary benefits shall be calculated as expeditiously as possible and preferably on or before 30th September 2021, failing which respondent No. 2 shall be liable to pay interest at the rate of Rs. 6 % per annum on the said amount.

Rule is made partly absolute in above terms.

(AVINASH G. GHAROTE)

(RAVINDRA V. GHUGE, J.)

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