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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9936 OF 2019

Shri Prasad Vinayak Sohoni

.. Petitioner

vs.

The Treasury Officer, Thane
and Ors.

.. Respondents

.....

Mr.Sanjay Kulkarni for the Petitioner

Mrs.P.J.Gavhane, A.G.P. for the State

Mr.Rajendra Dhaku Raut, Additional Treasury Officer

.....

CORAM: K.K.TATED &

R.I.CHAGLA, JJ.

DATED : FEBRUARY 24, 2021

P.C.

. Heard.

2. By this petition, under Article 226 of the Constitution of India, Petitioner is challenging the communication / letter dated 28.05.2019 issued by Respondent no.1 to the Petitioner for recovery from the Petitioner's pension amount.

3. The learned Counsel for the Petitioner submits that the Petitioner was appointed on 25.04.1984 as a Clerk in the High Court, Appellate Side, Bombay. Thereafter, Petitioner was promoted as Assistant on 03.07.2001. Petitioner submitted his application for voluntary

retirement dated 1st August, 2011 to the office of the Registrar General, High Court, Mumbai which was accepted. Thereafter, Petitioner retired voluntarily on 01.11.2011. Respondents paid amount of Rs.4,43,079/- on 20.01.2012.

4. The learned Counsel for the Petitioner submits that thereafter, the Respondents started deducting sum of Rs.5,000/- from his pension amount as per letter dated 28.05.2019 Exhibit 'E' on page 24 on the ground that some amount is paid by them in excess. He submits that Supreme Court in the matter of ***State of Punjab and Others vs. Rafiq Masif (White Washer) and Others, (2015) 4 SCC 334*** held that if employee is belonging to Class III and where payments have been made mistakenly by the employer, in excess of their entitlement, recovery by the employers would be impermissible in law. In support of this contention, he relies on paragraph 18 of the said judgment which reads thus:

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law.

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employee, or*

the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work again an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniouitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance or the employer's right to recover."

5. The learned Counsel for the Petitioner submits that Respondents filed their affidavit-in-reply dated 22.02.2021 stating that they already recovered the entire amount of Rs.3,60,580/- from the Petitioner and therefore, there is no question of taking any action against the Petitioner on the basis of letter dated 28.05.2019.

6. The learned Counsel for the Petitioner submits that amount recovered by the Respondent is contrary to law as declared by the Apex Court. Hence, Petitioner may be permitted to take appropriate action against the Respondent for recovery of the said amount.

7. On the other hand, the learned A.G.P. for the Respondent State submits that it is specifically stated in the

letter dated 28.05.2019 that they have to recover the amount of Rs.4,174/- per month from the Petitioner from 20.01.2012 to 19.01.2027. She submits that actually they recovered only arrears of Rs.3,60,580/-. She submits that as per their calculation, further amount is due and payable by the Petitioner.

8. The learned A.G.P. for the State submits that she received instruction from the concerned officer who is present in court that for further recovery of amount, if any, they will issue show cause notice to the Petitioner and then they will start recovery. She submits that, that liberty may be granted to the Respondents so that they can recover remaining amount also by following due process of law.

9. We have heard both the sides at length. It is to be noted that as on today, Respondent already recovered sum of Rs.3,60,580/- from the Petitioner. Not only that, Respondents filed their affidavit-in-reply dated 22.02.2021 where they specifically stated that they already recovered amount from the Petitioner and therefore, there is no question of taking further action on the basis of letter dated 28.05.2019. Paragraph 4 and 5 of the said reply reads thus:

“4. I say that, the Petitioner was working with the Office of the Registrar General Office, Bombay High Court from 25th April, 1984. I say that, the Petitioner submitted notice of voluntary retirement on 1.08.2011 and the same was accepted and the Petitioner was allowed to retire voluntarily w.e.f. 1.11.2011 by the Registrar, High

Court, Appellate Side, Mumbai. I say that, the Petitioner had already received the full amount of pension Rs.10435/- without reduction of commuted pension i.e. Rs.4174/- till 31st March 2019. Hence, nearly Rs.3,60,580/- had been already received by the Petitioner from the period 01/11/2011 to 31/03/2010. Hereto annexed and marked as Exhibit - A is the copy of the Chart showing full pension disbursement to the Petitioner without reduction of commuted pension.

5. *I say that it came to the knowledge of the Respondent No. 1 office that the Petitioner has been 1 office that the Petitioner has been paid full pension without reduction of the commuted pension and hence the respondent No. 1 issued letter dated 28.05.2019 for recovery of amount of Rs. 360580/- for the period 20.01.2012 to 31.03.2019. I say that, in pursuance to the communication dated 28.05.2019, the office of the Respondent No. 1 has started the process of recovery from April 2019 to July 2019, whereas an amount of Rs. 5000/- per month amounting Rs. 20000/- has been recovered. Thereafter, in the month of August 2019, the arrears of Rs. 340580/- was recovered as per the arrears of 7th Pay Commission. Hereto annexed and marked as Exhibit-B is a copy of the monthly system generated Chart showing recovery from the Petitioner.”*

10. In any case, during the course of argument, the learned A.G.P. pointed out that it is specifically stated in the letter dated 28.05.2019 that they have to recover further amount also. During the course of argument, she made a statement after taking instruction from the concerned officer before this court that if any further amount is

remained to be recovered from the Petitioner, that they will recover after following due process of law. Firstly, they will issue show cause notice to the Petitioner and after Petitioner's reply and or hearing they will decide course of action.

11. It is to be noted that submission made by the learned Counsel for the Petitioner that whatever amount is recovered by the Respondents is contrary to the law laid down by the Apex Court in the matter of *State of Punjab and Others vs. Rafiq Masif (White Washer) and Others, (2015) 4 SCC 334*. Therefore, oral prayer made by Advocate for the Petitioner can be accepted that, he can take appropriate proceeding against the Respondent for recovery of the said amount.

12. In view of these facts, Petition is disposed of with following order:

a. Liberty granted to the Petitioner to take out appropriate proceeding against the Respondents if he so desires for recovery of sum of Rs.3,60,580/- along with interest which was deducted by the Respondents from his pension amount.

b. Liberty granted to the Respondent State to recover further amount if any, due and payable by the Petitioner after following due process of law i.e. issuing show cause notice and after hearing the Petitioner.

c. With these directions, Writ Petition stands disposed of accordingly.

d. No order as to costs.

(R.I.CHAGLA, J.)

(K.K.TATED, J.)