IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1435 OF 2020

(UNION OF INDIA, MINISTRY OF EARTH SCIENCES & OTH...VS..MANOHAR BAPURAO DESHPANDE (DEAD, THR. LRS.) & OTH.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Ms Sushma, Advocate for Petitioners.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : SEPTEMBER 23, 2021.

1. Heard Ms Sushma, learned counsel for the petitioners.

2. The petitioners are displeased with the judgment dated 25th June 2019 delivered by Central Administrative Tribunal, Mumbai, Circuit Bench at Nagpur, in Original Application No. 2120 of 2018.

3. The Original Application was moved by the respondent No.1, a retired employee of the petitioner. The respondent No.1 had retired in the year 1994 and his pension was fixed in the year 1996. It was found later on by the petitioners that the pension was wrongly fixed and the mistake was on the higher side and therefore, the petitioners, by order passed on 26/04/2018, directed recovery of excess payment of pension made to the respondent No.1.

4. Being aggrieved by the same, the respondent No.1 filed the Original Application, referred to earlier. The application was decided in favour of the respondent No.1 on the ground that after lapse of about 22 years from the date of retirement, recovery of pension paid in excess could not be made by the petitioners. It was also found that if there was a mistake committed by the officers/ officials of the petitioners in wrongly fixing the pension, it was necessary for the petitioners to have fixed the responsibility in the matter. Therefore, by the judgment, impugned here, the Tribunal directed the petitioners to not make any recovery of the past over payment of the pension from the respondent No.1 and to refund the amount recovered till the date of the judgment. It also directed the petitioners to fix the responsibility on those who had made the wrong revision of the pension payable to the respondent No.1, within a period of six months from the date of receipt of copy of the judgment.

5. The learned counsel for the petitioners submits that the respondent No.1 had submitted an undertaking to the Bank where his pension account was maintained, that in case there was any over payment of pension amount to him he would refund the same and this fact was suppressed by the respondent No.1 before the Administrative Tribunal. She also submits that it was the duty of the Bank as well, which was a party to the proceedings before the Administrative Tribunal, to have

brought on record the fact of submission of undertaking by the respondent No.1. But, the Bank Authorities also did not file copy of the undertaking on record of the Original Application proceedings. According to her, if this undertaking is considered, the law in *State of Punjab and others..vs..Rafiq Masih (White Washer) and others*, reported in **(2015) 4 SCC 334** relied upon while passing the impugned judgment would become inapplicable and as per the undertaking given by the respondent No.1, the respondent No.1 will be liable to refund the amount paid in excess to him.

6. We are not inclined to accept such an argument. The reason being that the undertaking that was given by the respondent No.1 was admittedly furnished to the Bank where the pension account of the respondent No.1 was maintained and it was not given to the petitioners. Therefore, the undertaking creates no right in favour of the petitioners, which they could enforce against the respondent No.1 in a case where there was payment of excess pension amount to the respondent No.1. Further, the undertaking having not been given to the petitioners, the petitioners could not have insisted upon the respondent No.1 to have disclosed the fact of submission of an undertaking by him to the Bank. The undertaking given by the respondent No.1 was admittedly to the Bank and therefore, if there was any right to make recovery of excess payment of pension to the respondent No.1, the right was available only to the Bank. In the present case, the excess payment was

not made by the Bank, but by the petitioners and the petitioners having had no right to recover the excess payment made, in terms of the undertaking given by the respondent No.1 to respondent No.2 Bank, the petitioners could not have made any attempt to recover the amount by relying upon the undertaking.

7. Then, question would arose, as to whether or not, *de hors* the undertaking the petitioners could have recovered the amount of excess payment of pension to the respondent No.1 and in our considered view, answer has to be given in the negative and on the same lines as answered by the Tribunal in the impugned judgment. The Tribunal has found that the impugned order, dated 26/04/2018 was passed about 22 years after the date of retirement of the respondent No.1 and passage of such a long period of time has disentitled the petitioners from making any effort to recover the excess amount of pension paid to the respondent No.1. For this view, the Tribunal has drawn support from the reasoning adopted and the law laid down in the case of *State of Punjab and others..vs..Rafiq Masih (White Washer) and others* (supra). We find the view so taken by the Tribunal is consistent with the facts of the case and the law applicable to it and therefore, to this extent, the impugned judgment cannot be found to be having any fault in it.

8. As regards the challenge made to the second part of the impugned judgment directing the petitioners

to fix the responsibility of those who were responsible for making wrong revision of pension payable to the respondent No.1, we find that the logic that was pressed into service for prohibiting the petitioners from making any recovery of the excess payment made to the respondent No.1 would also apply in equal force to the issue of making of any enquiry and fixing of responsibility on the concerned officers or officials who had wrongly fixed/revised the pension of the respondent No.1. If after a lapse of about 22 years from the retirement no recovery of excess payment of pension made to the respondent No.1 could be made, equally, after lapse of such a long period of time no departmental enquiry for fixing of responsibility on the concerned officer/official can also be made. After such a long passage of time, most of the employees have retired and as a matter of fact, it is submitted by the learned counsel for the petitioners that all the concerned officers have already retired long back and therefore, it would neither be permissible in law to proceed against such retired employees nor practicable on account of difficulty in gathering the requisite evidence.

9. In the result, we are of the view that the prayer of the petitioners regarding interference with the second part of the impugned judgment can be considered even without issuing any notice to the respondent No.1 for the reason that this second part does not affect in any manner the respondent No.1, rather the respondent No.1 is not at all concerned with the second part of the impugned judgment.

10. Accordingly, we partly allow this petition and quash and set aside the impugned judgment to the extent that it directs the petitioners to fix the responsibility on those who had made the wrong revision of pension payable to the respondent No.1.

The petition is **disposed of** accordingly. No costs.

(ANIL S.KILOR,J) (SUNIL B. SHUKRE,J)

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