

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7291 OF 2022

Manohar Bappaji Gaikwad,
Age-59 years, Occu-Pensioner,
House No.3257, Laxmi Nagar,
R/o Bhoom, Tq. Bhoom,
Dist.Osmanabad

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai,

2. The State of Maharashtra,
Through its Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai,

3. The Principal District and Sessions
Judge in Administrative capacity,
District Court, Osmanabad,

4, Accountant General-II,
Nagpur, Account Department,
Nagpur,

5. Accounts Officer,
Aurangabad Through Pay
Verification Department,
Aurangabad

6. The Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai **(Deleted)**

-- RESPONDENTS

Mr.L.H.Kawale, Advocate for the petitioner.
Mr.S.G.Karlekar, AGP for respondent Nos. 1 and 2.
Mr.R.J.Godbole, Advocate for respondent No.3.
Mr.B.B.Kulkarni, Advocate for respondent No.4.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : DECEMBER 01, 2022

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

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

2. The petitioner has put forth prayer clause B and C as under :-

"B. By issuing writ of certiorari orders or directions in the like nature, the order dated 09.07.2021 passed by respondent No.5 so also the letter dated 27.10.2021 ld.CJJD, Kallam may kindly be quashed and set aside.

C. By issuing writ of mandamus orders or directions in the like nature, the respondents may kindly be directed to refund the amount of Rs.67,918/- deducted from the pensionary benefits of petitioner on 21.06.2022."

3. The petitioner was working as a Lower Division Clerk with the Civil Court at Kallam, Dist.Osmanabad. On 21.11.2006, he received an

advance increment on account of excellent work in pursuance to the minutes of the meeting dated 18.10.2006 conducted by the Advisory Committee recommending candidates for such advance increments. The petitioner superannuated on 31.10.2021 and his pension papers were forwarded. Respondent No.5 raised an objection on 09.07.2021 concluding that such advance increment was wrongly granted due to the applicability of the 6th Pay Commission recommendations from 01.01.2016. Consequentially, the learned Civil Judge, J.D. passed the impugned order dated 27.10.2021, directing recovery of Rs.67,918/- and the same has been recovered.

4. The petitioner relies upon the judgment delivered by this Court dated 09.01.2020 in WP No.1147/2018 filed by **Mahadu Datturao Pawar and others Vs. State of Maharashtra and others**. It was concluded in paragraph Nos. 19, 20 and 21 as under :-

"19. In the said backdrop of admitted facts, the case of State of Punjab Vs. Rafiq Masih (supra) would apply to the facts of the present case. The observations made by Honourable the Supreme Court of India in case of State of Punjab Vs. Rafiq Masih (supra) in paragraph no.18 of the judgment read thus :

"18. It is not possible to postulate all situations of hardship which would govern employees on the

issue of recovery, which 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 employees, 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 employees, 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 against an inferior post.

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

In view of above observations made by the Honourable the Supreme Court of India in the case of State of Punjab Vs. Rafiq Masih, we have no hesitation to hold that the impugned recovery initiated vide letter dated 6.9.2017 is illegal and contrary to the well settled law position.

20. *Moreover, from the Government Resolution dated 24.8.2017, we do not find anything in the said Government Resolution from which it can be gathered that the said Government Resolution is made applicable with retrospective effect. Thus, we hold that the said Government Resolution is having prospective effect.*

21. *In the said backdrop, we are of the view that the present petition deserves to be allowed and the same is accordingly allowed in terms of prayer clause (B). The impugned letter dated 6.9.2017 issued by respondent no.3 – Principal District and Sessions Judge, Latur is hereby quashed and set aside.”*

5. The petitioner further relies upon an order dated 06.10.2022 passed by this Court in WP No.9393/2019 filed by **Vinod Ramrajo Jadhav, Hawaldar and others Vs. The State of Maharashtra and others.**

6. It is well settled that the GR dated 24.08.2017 introduced by the

State Government, thereby declaring a policy decision of stopping the payment of advance increments, will be applicable prospectively. All those petitioners, who had approached this Court, have been granted the benefits of advance increment until 24.08.2017 and the GR is held to be applicable only in prospectivity.

7. The learned Advocate representing respondent No.3 and the learned AGP representing respondent No.5, opposed this petition. It is canvassed that the petitioner has given an undertaking/ agreeing for refunding of the said amount, if it is noticed that, on 02.05.2009, there was an incorrect fixation of pay or any excess payment was made in the light of the discrepancy notice subsequently. The undertaking issued by the petitioner reads thus :-

"I hereby undertake that, any excess payment that, may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of this discrepancies noticed subsequently, will be refunded by me to the Government either by adjustment against future payments due to me or otherwise."

8. Reliance is placed on the judgment delivered by the Hon'ble Supreme Court in the matter of **High Court of Punjab and Haryana and others Vs. Jagdev Singh [(2016) 14 SCC 267]**.

9. We find that the GR dated 24.08.2017 was introduced for the first time by the State Government and which was also made applicable to the employees of the District judiciary. All those who were entitled for an advance increment or additional increment for excellent work, were held to be ineligible by virtue of the said GR. This Court has consistently taken the view and which is by now settled that the GR dated 24.08.2017, would be applicable prospectively. In Vinod Ramrajo (supra), this Court has recently held in respect of the petitioners, who are working in the District Courts at Osmanabad and Beed, that the withdrawal of the additional increments can be sustained, prospectively from 24.08.2017.

10. The Law laid down by the Hon'ble Supreme Court in **High Court of Punjab and Haryana and others Vs. Jagdev Singh (supra)** permits recovery from an employee who is not on the verge of retirement, who is not a Class-III or Class IV employee, who has not played a fraud and who has given an undertaking permitting employer to recover the amount.

11. In the facts of the case before us, the recovery of the amounts is

on account of the introduction of the GR dated 24.08.2017. This is held to have prospective effect. As such, the undertaking dated 02.05.2009 executed by the petitioner would not weigh against him since the grant of increment was neither accidental / erroneous nor had the petitioner played any fraud or had any involvement in the wrong pay fixation. The Advisory Committee consisting of Judges and other authorities, had recommended the case of the petitioner for such increment. The learned Advocate for the petitioner submits that after the introduction of the GR dated 24.08.2017, the increment has been stopped and no payment has been made. It is in these circumstances, that we conclude that the undertaking cannot be applied against the petitioner since the earlier pay fixation was neither fraudulently done nor mistakenly calculated.

12. In view of the above, this petition is allowed in terms of prayer clause B and C. We expect the respondent authorities to ensure that the amount of Rs.67,918/- is refunded to the petitioner on or before 15.01.2023, failing which the said amount shall carry simple interest @ 5% p.a. from the date of it's deduction till the date of actual payment.

13. Rule is made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)