

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10677 OF 2019

Gokul Sheshnath Landge

Age : 59 years, occ : pensioner

R/o Jake Pimpri, Post Arangaon,

Taluka Paranda, Dist. Osmanabad.

Petitioner

Versus

1. The State of Maharashtra
Through its Secretary
Water Supply and Sanitation
Department, Mantralaya,
Mumbai.
2. The Member Secretary
Maharashtra Jeevan Pradhikaran,
4th Floor, Express Towers,
Ramnath Goenka Marg, Nariman
Point, Mumbai.
3. The Senior Accountant Officer
(Pension Division), Maharashtra
Jeevan Pradhikaran, 3rd Floor,
CIDCO Bhavan (South Zone),
New Mumbai – 400 614.
4. The Executive Engineer,
Maharashtra Jeevan Pradhikaran,
Jal Vyavasthapan Division, Satara,
Taluka and District Satara.

5. The Superintendent Engineer,
Maharashtra Jeevan Pradhikaran,
Inside of Annapurna Centre,
Central Building 1st Floor, Pune.

6. Adhyaksha Parimandal Samiti,
Maharashtra Jeevan Pradhikaran
Parimandal, Aurangabad, Near
Milind College, Chhawani,
Aurangabad.

Respondents

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Mr. E.S. Murge, Advocate for the petitioner.

Mr. K.N. Lokhande, A.G.P. for respondent No. 1.

Mr. Sachin Randive, Advocate for respondent Nos.2 and 3.

Mr. D.R. Bakshi, Advocate for respondent No. 6.

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CORAM : C.V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.

DATE : 21 JUNE 2022

ORAL JUDGMENT (PER C.V. BHADANG, J.) :

Rule. Rule made returnable forthwith. The learned Counsel for the respondents waive service. Heard finally by consent of the parties.

2. By this petition, the petitioner is challenging the communication dated 19 July 2019 issued by the third respondent

and consequent order dated 8 August 2019 passed by the fourth respondent directing recovery of an amount of Rs. 3,60,866/- from the pensionary benefits of the petitioner, on the ground that on account of an error in computation, excess amount has been paid to the petitioner.

3. The petitioner was working with the fourth respondent Maharashtra Jeevan Pradhikaran as a Pump Attendant at Latur. The petitioner retired from service on 30 April 2019 on attaining the age of 58 years. The petitioner was informed that while calculating the benefits of Assured Career Progression, after putting in 12 years of service, the period of 12 years was wrongly calculated from 17 May 1986 instead of 29 July 1987. The petitioner was informed that on 17 May 1986 he was initially appointed on a work charged establishment. Secondly, by an order dated 8 August 2019, it was found that as per the Sixth Pay Commission, two advance increments are not permissible to the employees for excellent work. It was on account of these circumstances, that the fourth respondent claimed that there is excess payment.

4. We have heard the learned Counsel for the parties.

5. The learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in *State of Punjab and others vs Rafiq Masih (WhiteWasher)*, AIR 2015 SC 696 in order to submit that in the absence of there being any fraud or misrepresentation at the behest of the employee, such recovery cannot be made, which results into hardship on the concerned employee. The learned Counsel for the petitioner also placed reliance on the order dated 25 July 2019 passed by this Court in Writ Petition No. 8493 of 2019 and Writ Petition No. 9189 of 2019 in which this Court had held that the Government Resolution dated 24 August 2017 will have prospective effect and the benefit conferred on the employee for excellent work, cannot be withdrawn.

6. The learned Counsel for respondent No.4 has submitted that the recovery was on account of some error in computation of the benefits to which the petitioner was not entitled. He, however, did not dispute that there are no allegations of any fraud or misrepresentation on the part of the petitioner resulting into the excess payment.

7. We have considered the circumstances and submissions made. It is now well settled that such recovery, cannot be effected in the absence of there being any allegations of fraud or misrepresentation on the part of the employee resulting into such excess payment. In the present case, there are no such allegations. Secondly, so far as the contention that the petitioner was not entitled to the advance increments for excellent work is concerned, this Court, by order dated 25 July 2019 in Writ Petition No. 8493 of 2019 has already held that the relevant Government Resolution of the year 2017 will have prospective effect. Even so far as the calculation of 12 years period is concerned, it is not pointed out that the petitioner was at fault much less there was any misrepresentation on the part of the petitioner. Therefore, we find that the petitioner is entitled to succeed.

8. In the result, the petition is allowed. The impugned communication dated 19 July 2019 issued by respondent No.3 and the order dated 8 August 2019 passed by respondent No.4 are hereby set aside. Respondent Nos.3 and 4 shall process the proposal for retirement benefits of the petitioner in accordance with

law and the applicable rules, without insisting for the recovery as shown in the impugned communication dated 19 July 2019 and the order dated 8 August 2019.

Rule is made absolute in aforesaid terms.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.