

Urmila Ingale

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

WRIT PETITION NO. 8412 OF 2018

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Somnath Ambrushi Waghmare and ors. .. Petitioners
Vs.
Chief Officer, Barshi Municipal Council,
Barshi and ors. .. Respondents

Mr. Ashutosh M. Kulkarni, for Petitioners.

Mr. Mandar Limaye i/b Mr. V.V.Pethe, for Respondent
No.1.

Mr. Manish M. Pabale, AGP for State.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: MARCH 22, 2022

P.C.: (Per M. S. KARNIK, J.)

1. The petitioners, ten in number, have approached this Court under Article 226 of the Constitution of India, *inter alia*, seeking the following substantive relief: -

“(b) To hold and declare that the act of recovery of the difference of benefits already granted to the petitioners under Revised Assured Career Progression Scheme is completely illegal, unfair, improper, unnecessary, iniquitous and arbitrary and further to restrain the respondent No.1 from recovering the same from the petitioners from their salary, pension and/or retirement benefits;
(c) To repay the amounts already deducted from the salaries, gratuity and leave encashment of the respective petitioners towards recovery of difference of benefits granted under the Revised Assured Career Progression Scheme to the petitioner Nos. 1, 3, 6 & 10.”

2. The petitioners are employees of Barshi Municipal Council (hereafter 'Municipal Council', for short) of which its Chief Officer is the respondent no.1. Some of the petitioners [2, 7 and 9] are still in employment, whereas the rest have attained the age of superannuation. The petitioners are/were working on the post of clerk/chlorine attendant/mechanic/cleaning supervisor/nurse. The Municipal Council is established under the provisions of the Maharashtra Municipal Councils and Nagar Panchayats and Industrial Townships Act, 1965. The respondent no. 4 is the District Collector, Solapur (hereafter "District Collector", for short) who has given approval to the grant of benefits to the petitioners under Revised Assured Career Progression Scheme (hereafter "RACPS", for short).

3. The respondent no. 2, the State of Maharashtra (hereafter "the State Government", for short) issued a Government Resolution (hereafter "GR", for short) dated June 8, 1995 introducing Time Bound Promotion Scheme (hereafter "TBPS", for short) with effect from October 1, 1994 for the benefits/promotion of the employees belonging to category 'C' and 'D', who have completed 12 years of service. According to the petitioners, in view of the said GR, they were granted the benefits of the TBPS upon completion of 12 years of service from their respective dates of appointment. The State Government on the recommendations of Pay Revision Commission discontinued the TBPS and introduced the Assured Career Progression Scheme (hereafter "ACPS", for short) with effect from August 1, 2001 vide GR dated July 20, 2001 and made it applicable to the employees working on or

below the pay scale of Rs. 8,000/- to 13,500/-. As the petitioners received the benefits of the TBPS, they were held not eligible for the benefits of the ACPS.

4. The State Government constituted a Pay Revision Committee in 2008 to make recommendations regarding the revision of pay scales of the State Government employees. On receipt of the report and recommendations of the said Committee, the State Government introduced the RACPS vide GR dated April 1, 2010 and the same was given effect from October 1, 2006. By virtue of the RACPS, the employees are entitled for two career progressions subject to the terms and conditions mentioned in the said GR. The employees who have completed 12 years of service are eligible for the first benefit and the second one on completion of 24 years of service. The petitioners having already received benefits under the TBPS, the question of giving them first benefit under the RACPS did not arise. It is the petitioners' case that they are entitled for the second benefit upon their completion of 24 years of service.

5. In order to grant second benefit of the RACPS to the petitioners, the Municipal Council passed Council Resolution No. 6 on May 31, 2010. Thereafter, the proposals were forwarded to the District Collector, Solapur by the Chief Officer of the Municipal Council on July 15, 2015 to sanction the second benefit under the RACPS to the eligible employees. The meeting of the District Progression Committee, Solapur was held on September 5, 2015 and in the said meeting, the proposal for granting second benefit under the RACPS to 58 eligible employees was sanctioned. The same was

communicated to the Municipal Council vide letter dated September 11, 2015.

6. Thereafter, in another meeting of the District Progression Committee, Solapur held on November 17, 2015, the proposal for granting benefits of the RACPS to 58 other employees was also sanctioned and the same was communicated to the Municipal Council vide letter dated November 19, 2015. The Chief Officer of the Municipal Council by letters dated September 15, 2015 and November 26, 2015, circulated the lists of eligible employees in the concerned departments with a direction to prepare the bills for payment of salary in terms of the sanction for payment to the employees in accordance with revised pay so fixed. The petitioners were paid salary in accordance with the revised pay and the difference of benefit on account of the RACPS also came to be granted. It appears that the Chief Officer and the District Collector under a mistaken impression that these municipal employees are covered by the GR dated April 1, 2010, sanctioned benefits of the RACPS in favour of the petitioners.

7. However, it is only on September 27, 2017, by issuing a GR, the State Government made the RACPS applicable to the Municipal employees. The GR dated September 27, 2017 provided that RACPS shall be made applicable with effect from October 1, 2006 and the benefits shall be given from the date of the said GR, i.e., September 27, 2017. Such GR provides that the eligible employees are not entitled for any arrears under the GR, for, though it is effective from October 1, 2006, the effect is limited to notional pay fixation. The employees are thus made eligible for grant of benefits under the RACPS

prospectively, i.e., from the date of GR (September 27, 2017).

8. Learned advocate for the petitioners contended that by misinterpreting the aforesaid GR dated September 27, 2017, the Chief Officer of Municipal Council effected recovery of benefits already granted to the petitioners under the RACPS. Learned advocate relied upon the copies of the salary slips and pension certificates of the petitioners annexed to this petition to demonstrate the deductions made towards recovery of benefits already granted. Pursuant to the representations made by the petitioners, the deductions towards recovery from salary/pension are suspended. The petitioners apprehend that the recovery may be made at any point of time. It is submitted that the Municipal Council has deducted substantial amount of the excess payment made under the RACPS from the petitioners 1, 3, 6 and 10 from the gratuity, leave encashment payable upon their retirement. The petitioners 4, 5 and 8 apprehend recovery of excess payment from their pension. According to learned advocate, the petitioners 2, 7 and 9 are on the verge of retirement. They too apprehend such recovery in like manner. Learned advocate relied upon the decision of the Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others**¹ to submit that the recovery of the amount paid in excess is without any fault on the part of the petitioners and hence, such recovery at the instance of the Municipal Council is impermissible.

9. Mr. Mandar Limaye, learned advocate appearing on behalf of respondent no.1 argued in support of the decision

1 (2015) 4 Supreme Court Cases 334

taken by the Municipal Council recovering the excess amount paid to the petitioners. He submits that benefit of the RACPS was erroneously granted to the petitioners under a mistaken impression that the petitioners' case is covered by the GR dated October 1, 2010. It is submitted that the GR dated September 27, 2017 clearly provides that Municipal employees are eligible for grant of benefits under the RACPS with effect from October 1, 2006, but the benefits shall be given from the date of such GR, i.e., w.e.f. September 27, 2017. The employees are not entitled for the arrears, but only eligible for notional pay fixation with effect from October 1, 2006. The GR applies prospectively. The recovery cannot be said to be illegal as only excess payment is sought to be recovered.

10. We have also heard Mr. Pabale, learned AGP, appearing on behalf of the State of Maharashtra and the District Collector, who adopted the arguments of Mr. Limaye and also made submissions on similar lines as advanced by Mr. Limaye.

11. We have perused the petition memo and the relevant exhibits annexed thereto. There is no dispute that the petitioners belong to either the group 'C' or group 'D' service. There is further no dispute that the petitioners are entitled to grant of second benefit under the RACPS. Perusal of GR dated September 27, 2017 leaves us in no manner of doubt that benefits of the RACPS are made applicable to municipal employees by virtue of the said GR and that they are entitled to the benefits from September 27, 2017. The notional pay fixation is to be made from October 1, 2006.

12. The Municipal Council under a mistaken impression, passed a resolution conferring benefits of the RACPS under the GR dated April 1, 2010 to the municipal employees. Thereafter, even the District Progression Committee, Solapur sanctioned the proposal for grant of benefits as per the Council Resolution without realizing that the RACPS is not made applicable to municipal employees at that point of time. The salary of the petitioners was accordingly fixed on the footing that they are eligible for benefits under the RACPS and arrears are paid to them.

13. The respondents are justified in contending that the petitioners were not entitled to benefits of the RACPS prior to September 27, 2017 except for notional pay fixation w.e.f. October 1, 2006. The actual benefits of the RACPS apply prospectively, i.e., with effect from September 27, 2017.

14. Undoubtedly, excess payment has been made to the petitioners by wrongly granting benefits of the RACPS even prior to September 27, 2017. The question, therefore, is whether it is open for the Municipal Council to recover such excess amount paid even though the petitioners are not entitled to it. The petitioners admittedly belong to group 'C'/'D' service. It is not the case of the Municipal Council that based on any misrepresentation made by the petitioners that the said benefits came to be granted. It is also not alleged that the benefits are fraudulently obtained. Benefits of the RACPS granted by the Municipal Council are on its own volition after passing a Council Resolution which later came to be sanctioned by the District Progression Committee. No fault is attributed to the petitioners in the matter of such excess

payment. The case of the Municipal Council is that under a mistaken impression, the benefits are wrongly conferred upon the petitioners, which now they are seeking to recover.

15. Learned advocate for the petitioners is justified in placing reliance on the decision of the Supreme Court in the case of **State of Punjab** (supra). Their Lordships after deliberating in detail in the matter regarding recovery of excess amount paid to the employees, in paragraph 18 summarized a few situations wherein recoveries by the employers would be impermissible in law. The Supreme Court observed that is it 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. We may usefully refer to paragraph 18 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from 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."

16. In the present case, we find that the Municipal Council has mistakenly made excess payments to the petitioners in excess of their entitlement. The recovery is sought to be made by the Municipal Council from the petitioners who belong to groups 'C' and 'D' service. Further, except the petitioners 2, 7 and 9, rest of the petitioners have retired from service. Even the petitioners 1, 2 and 7 are on the verge of retirement. The petitioners' case is squarely covered by clause (i) of paragraph 18 of **State of Punjab** (supra). The case of the petitioners 3, 4, 5, 6, 8, 9 and 10 is also covered by clause (ii) of paragraph 18 of **State of Punjab** (supra). The recovery is sought to be effected from the petitioners, most of whom have retired from service. In our opinion, the present case is also covered by clause (v) as recovery, if made from the petitioners at this distance of time, would be iniquitous, harsh and arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

17. The claims of the petitioners succeed. The writ petition is allowed in terms of prayer clauses (b) & (c). The amounts recovered be repaid to the petitioners within a period of eight (8) weeks from date. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)