

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

WRIT PETITION NO.2881/2021

Ku. Hrutuja Subhash Humane,
 aged about 19 years, Occ. Student,
 r/o c/o Leena Hariram Bramhane,
 At Vishwaprabha Colony, Shegaon-
 Rahatgaon Road, PO V.M.V. Tahsil,
 Dist. Amravati – 444 604

.....PETITIONER

...V E R S U S...

1. Zilla Parishad, Amravati.
 Through its Chief Executive Officer,
 Amravati.
2. Education Officer (Primary),
 Zilla Parishad, Amravati.
3. Block Development Officer,
 Panchayat Samiti Nandgaon
 Khandeshwar, Dist. Amravati.
4. Chief Accounts and Finance Officer,
 Zilla Parishad, Amravati.
5. Rukhmabai Pralhadrao Humane,
 aged 75 years, Occ. Housewife,
 at Post Pardi, Tq Dist. Amravati,
 Buddhapura, beside Narayan Savai
 Zilla Parishad School, Post Pardi,
 Tq. Dist. Amravati – 444 905.

...RESPONDENTS

 Mr. R. D. Hajare, Advocate for petitioner.

Mr. S. M. Bhongade, Advocate for respondent nos. 1 and 2.

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED :- 29.08.2022

J U D G M E N T (Per: Anil L. Pansare, J.)

Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The petitioner is a daughter whose parents expired in harness in a vehicular accident that occurred on 02.07.2015. The petitioner was then a minor. Father of the petitioner was working as a graduate teacher and mother as assistant teacher with respondent-Zilla Parishad. Since the petitioner was minor, the pension papers were prepared in the name of respondent no.5-grandmother of the petitioner. The family pension was released in the name of the respondent no.5-petitioner's grandmother. It is the case of the petitioner that she having now attained majority, the family pension should be released in her favour. However, the respondents have pleaded, in their affidavit-in-reply, that the family pension is being paid to the petitioner and that the petitioner has suppressed the said fact. The respondents have even furnished bank account number of

the petitioner. Thus, issue as regards releasing the family pension in favour of the petitioner, has been resolved.

3. The petitioner has also sought a direction against the respondents to recover the family pension released in favour of the respondent no.5-grandmother and to release the said amount in favour of the petitioner. We do not find any merit in the relief sought to that extent as the respondents have rightly released the family pension in favour of the respondent no.5-grandmother of the petitioner while the petitioner was minor and in case there is any dispute between the petitioner and the respondent no.5 to that effect, the appropriate remedy lies elsewhere for recovery of the amount.

4. The most crucial point is the impugned order dated 01.08.2016 issued by the respondents directing total recovery of Rs.7,06,681/- from the retiral benefits of the parents of the petitioner. In fact, the said amount has already been recovered. According to the respondents, in view of the Government Resolution dated 20.07.2002, issued by the Government of Maharashtra, it was made mandatory for all the Government

officers which includes the parents of the petitioner, to submit the certificate of knowledge of the computer issued by the authorised Government institution. The parents of the petitioner failed to do so. Therefore, recovery has been made in the light of the provisions of aforesaid Government Resolution. Learned counsel for the respondents submits that prior permission for recovery of amount was sought from the respondent no.5-grandmother of the petitioner. The respondent no.5, vide letter dated 10.06.2016, had accorded consent for the recovery of said amount payable from the gratuity.

5. Admittedly, the amount has not been recovered during the lifetime of the parents and while they were in service. The question is whether after death of parents, it was permissible for the respondents to recover the amount. The answer has to be in the negative in view of the settled legal position as laid down in the case of *State of Punjab and Ors. Etc. Vs. Rafique Masih (White Washer) etc.*¹ wherein the Supreme Court, has held thus:

1 2015 (4) SCC 334

“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.”

6. In our considered view, the case of the petitioner will be governed by clause (v) of the above ruling. The respondents ought not have recovered the said amount after the death of the employees i.e. parents of the petitioner, who cannot be blamed for excess payment made by the employer. The recovery is thus bad in law. Hence, we proceed to pass the following order.

(i) The writ petition is partly allowed.

(ii) Order dated 01.08.2016 passed by Senior Accounts Officer, Zilla Parishad, Amravati, directing the total recovery of Rs.7,06,681/- from the family pension of the petitioner is quashed and set aside.

(iii) The amount recovered, along with interest at the rate of 9% per annum, be released in favour of the petitioner within four weeks from the date of receipt of this order.

(iv) Professional charges of Mr. R. D. Hajare, learned counsel appointed through High Court Legal Services Sub Committee, Nagpur shall be quantified and paid in accordance with the rules.

(v) Rule is made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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