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

WRIT PETITION NO. 1165/2021

(VANDANA ARUN SOMKUWAR & OTHERS **VERSUS** MAHARASHTRA STATE ROAD TRANSPORT CORPORATION, NAGPUR)

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

Shri S.A. Nerkar, counsel for the petitioners.
Shri A.D. Sonak, counsel for the respondent.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE : SEPTEMBER 06, 2022.

P.C.

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

The husband of the petitioner no.1 and the father of the petitioner nos.2 to 4 was working as Traffic Controller which was a Class-III post with the respondent-Corporation. On account of his health issues the said employee sought voluntary retirement from the Corporation from 01.01.2017. Shortly thereafter, he expired on 25.05.2017. On 31.10.2017, the Corporation issued a communication to the petitioner no.1 stating therein that on account of re-fixation of the pay, it was found that there was some overpayment made and hence an amount of Rs.4,42,972/- was liable to be deducted. This amount was deducted from the dues payable towards gratuity and leave encashment. Being aggrieved the petitioners have challenged the said order.

The learned counsel for the petitioners submits that the recovery effected after the death of the employee is impermissible especially in view of the decision in *State of Punjab & Others Versus Rafiq Masih (White Washer) & Others* [**(2015) 4 SCC 334**]. By virtue of paragraph 18(v) of the said decision, it would be harsh to now recover the said amount from the widow and children of the deceased employee. It is further submitted that such overpayment cannot be attributed to the deceased employee and it is merely a case of miscalculation and misapplication of the relevant Rules to the case of the deceased employee. He has invited our attention to the judgment in **Writ Petition No.4588 of 2018** [*Hemlata Ishwar Bante & Others Versus Maharashtra State Road Transport Corporation*] decided on 04.03.2020 and submitted that the impugned recovery was liable to be set aside.

The learned counsel for the respondent-Corporation on the other hand submitted that the employee during the lifetime was put to notice that in case there was any excess payment, the same would be recovered from him. He further submits that though the impugned communication is dated 31.03.2017, the challenge to the same has been belatedly raised. It is thus submitted that on these counts no interference with the order of recovery was necessary.

Having heard the learned counsel for the parties, we find that there is no dispute that the employee had obtained voluntary retirement on 01.01.2017. He expired on 25.05.2017 and thereafter on 31.10.2017 the order of recovery had been issued. This recovery is on account of overpayment during the course of pay-fixation. It is not the case of the respondent-Corporation that the deceased employee was responsible for such overpayment or that at his instance such amount was required to be paid by the respondent-Corporation. The deceased employee was holding a Class-III post and hence the observations in paragraph 18(v) of the decision in *Rafiq Masih (White Washer)* (supra) would be attracted. We find that recovery of the aforesaid amount from the legal heirs would be harsh and arbitrary and would outweigh the equitable balance of the respondent's right to recover. This Court in *Hemlata Ishwar Bante* (supra) has taken a somewhat similar view. In that view of the matter, we find that the order of recovery is unjustified.

Insofar as the submission of the learned counsel for the respondent-Corporation as regards the communication dated 29.12.2016 is concerned, the fact remains that such recovery has been effected after his death. Further, the proceedings are now initiated by the legal heirs and we do not find that the writ petition has been preferred belatedly so as to disentitle the petitioners from grant of the relief. Hence the aforesaid submission cannot be accepted.

In view of aforesaid, the communication dated 31.10.2017 is quashed and set aside. The amount of Rs.4,42,972/- shall be repaid to the petitioners by the respondent-Corporation within a period of eight weeks from today failing which the amount would carry interest at the rate of 6% per annum from the date that amount is payable till actual realization.

The writ petition is allowed in aforesaid terms. No costs. Rule accordingly.

(URMILA JOSHI-PHALKE, J.) **(A. S. CHANDURKAR, J.)**

APTE