

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3373 OF 2023

WAMAN CHAVDAS THOSARE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS

...

Advocate for Petitioner : Shri Rakhunde Pravin B.
AGP for Respondent 1/State : Shri P.S. Patil
Advocate for Respondents 2 to 4 : Shri V.V. Gujar

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CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.

DATE :- 28th March, 2023

Per Court :-

1. The Petitioner has put forth prayer clauses B and C
as under:-

- “B) *By way of appropriate writ order or direction in the like nature, this Hon'ble High Court may kindly hold and declare that, the impugned order dated 11.11.2022 passed by the respondent No.3, thereby effecting the recovery of Rs. 2,91,635/- from the monetary benefits payable, is wholly unjustified and contrary to the law laid down by the Hon'ble Apex Court in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in 2015 (4) SCC 334.*
- C) *By way of appropriate writ order or direction in the like nature, this Hon'ble High Court may kindly direct the respondent Nos. 2 to 4 to*

refund the amount of Rs. 2,91.635/-recovered from the monetary benefits payable to the petitioner, pursuant to the impugned order dated 11.11.2022 issued by respondent No. 3.”

2. The Petitioner contends that the employer has effected recovery of Rs.2,91,635/- from his retiral benefits on the ground that he had not completed MS-CIT course as directed by the Government and, therefore, the pay scale granted to him was not admissible.

3. The Petitioner has placed reliance upon the circulars dated 28.07.2014 and 26.2.2019 issued by the State Government directing that no recovery would be effected from the employees, who have been paid excess amounts for more than five years or if they are Class-III employees and no fault can be attributed to their conduct.

4. The Petitioner was working with the Zilla Parishad. He completed his MS-CIT course in 2018. By the two Government circulars, the State Government had directed not to effect any recovery from the retired Class-III and Class-IV employees in cases wherein excess payments have been made.

5. Strenuous contention of the respondent/Zilla

Parishad, is that, the Petitioner has enjoyed wrong pay fixation when he had not completed MS-CIT within the stipulated period. The employer was, therefore, within its powers to recover excess amounts paid to the Petitioner. He also submits that, the Petitioner had executed an undertaking on 08.04.2022, wherein, he had agreed to refund the excess amounts received by him. He retired in July, 2022.

6. We have considered the law laid down by the Hon'ble Supreme Court in ***High Court of Punjab and Haryana and others Vs. Jagdev Singh, (2016) 14 Supreme Court Cases***

267. Relevant paragraph nos.10 to 12 read thus :-

“10. *In State of Punjab v. Rafiq Masih this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law: (SCC pp. 334-35)*

- (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. (emphasis supplied).*

11. *The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.*

12. *For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years."*

7. The Petitioner has not executed an undertaking at the time of receiving the additional revised pay benefits. There is no dispute that the Petitioner had received the pay scale benefits during his service tenure and the recovery has been effected after the Petitioner has superannuated. These facts are well covered

by the law laid down by the Hon'ble Supreme Court in the matter of *Syed Abdul Qadir Vs. State of Bihar, 2009 (3) SCC 475* and *the State of Punjab and others Vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334*. The Petitioner was in Class-III category and has superannuated in July, 2022. Recovery is sought after his retirement.

8. In view of the above, **this Writ Petition is allowed.** The impugned order of recovery dated 11.11.2022 is quashed and set aside. We direct the Zilla Parishad to refund the deducted amount to the Petitioner, on or before 30.04.2023, without interest, failing which interest admissible would be payable.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)