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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

908 WRIT PETITION NO.3238 OF 2021

DR. NASEER AHMAD ASHFAQUE AHMAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr Jayant S. Deshmukh, Advocate for petitioner;
Mr V. M. Kagne, A.G.P. for respondent No.1

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 24th January, 2023

PER COURT:

1. Despite service of Court notice, respondent Nos.2 to 5 i.e. the Zilla Parishad Authorities, have not caused an appearance, either in person or through an Advocate.
2. The petitioner has put forth prayer clauses (c),(d) and (e), which read as under :-

“c) By issuing appropriate writ or direction the impugned order dtd. 12.02.20 issued by Respondent no.3, and Gratuity Payment order dtd. 20.03.2020 issued by Respondent no.5 there by sought recovery of excess amount Rs.16,67,124/- (Rupees Sixteen lacs sixty seven thousand one hundred twenty four only) from petitioner from his gratuity amount and arrears of monthly pension of petitioner may kindly be quashed and set-aside.

d) By issuing appropriate writ or direction the impugned order dtd.12.02.2020 issued by Respondent no.3, and Gratuity Payment order dtd.20.03.2020 issued by

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Respondent no.5 there by sought recovery of excess amount Rs.16,67,124/- (Rupees Sixteen lacs sixty seven thousand one hundred twenty four only) from petitioner from the gratuity amount and arrears of monthly pension of the petitioner, may kindly be stayed.

e) By issuing approach writ or direction the respondents may kindly be restrained from recovering the alleged excess amount paid to petitioner due to wrong pay fixation as per orders dtd.12.02.2020 and 20.03.2020 issued by Respondent no.3 and Respondent no.5 respectively.”

3. By the first order passed by this Court, dated 20/02/2021, recovery pursuant to the impugned communication has been restrained. At the same time, it was made clear that there would be no stay to the re-pay fixation done, obviously, prospectively.

4. The petitioner has retired as a Class-III employee on 31/01/2019. The impugned recovery from his Gratuity and retiral benefits to the tune of Rs.16,67,124/-, is towards payment under purported wrong pay-fixation. The purported excess salary paid to the petitioner was for the period from 1st March 2009 till January 2019. It is after one year of his superannuation, that the impugned order dated 12/02/2020 has been issued by the Zilla Parishad, calculating the excess amounts paid to the petitioner. It is apparent that such amounts were paid from 1st March 2009 till January 2019.

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5. The learned Advocate for the petitioner has made a solemn statement that, the petitioner has never executed any undertaking to the Management, thereby declaring that, if it is noticed that excess payment has been made to the petitioner, the same can be recovered from his salary or from his retiral benefits. Moreover, the recovery is sought after 11 years. The recovery is towards the payment made on the basis of pay-fixation and the Zilla Parishad never noticed any error or mistake in such pay-fixation for 11 years.

6. In the impugned notice, there is no allegation as regards the integrity of the petitioner, inasmuch as, no laches or oblique motives are attributed to his conduct. The impugned notice also does not indicate that the petitioner had himself orchestrated the pay-fixation by personally getting involved in the said exercise and thereby gained undue and unjustified benefit, which could be termed as unjustful enrichment.

7. In view of the above, it is obvious that the law laid down by the Hon'ble Supreme Court in **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**, would be clearly applicable to this case.

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8. Hence, this petition is partly allowed to the extent of the recovery of Rs.16,67,124/-. Since the retiral benefits and the pensionary benefits of the petitioner are kept on hold on account of such recovery, the respondent/Zilla Parishad is directed to release the retiral benefits, pensionary benefits and Gratuity amount, if not already paid, alongwith admissible interest. If the amount sought to be recovered is the only quantum that has been retained by the Zilla Parishad, the same shall be release and shall be paid to the petitioner, with admissible interest, on or before 31/03/2023.

9. Insofar as the purported mistake noticed by the Zilla Parishad as regards to pay-fixation of the petitioner is concerned, we permit such pay-fixation to be made prospectively and by recalculating the pensionary benefits of the petitioner, the payment of the revised pension be commenced.

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

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