IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO.14822 OF 2019

ROHIDAS RUPCHAND SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.R.P.Bhumkar, Advocate for the petitioner.
Mr.P.S.Patil, AGP for respondent/State.
Mr.A.G.Vasmatkar, Advocate for respondent Nos.2, 3 to 6.

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

DATE : JANUARY 5, 2023

PER COURT :

1. The petitioner is a retired employee, having superannuated on 31.05.2017. After his retirement, the Audit Department raised an objection as regards the ACPS benefits extended to him on 10.01.2003 on the ground that since he was 9th standard pass, he was not entitled for the ACPS benefits.

2. The only issue that needs consideration is as to whether the petitioner can be subjected to re-fixation of his pay scale and whether recovery of amounts paid by way of the ACPS benefits, can be ordered.

3. The Hon'ble Supreme Court has delivered judgments in similar cases in **Syed Abdul Qadir and others Vs.State of Bihar and others, 2009(3) SCC 475** and **State of Punjab and others Vs.Rafiq Masih (White Washer) etc., (2015) 4 SCC 334 = AIR 2015 SC 696**.

4. It is obvious that the petitioner was granted the benefits of ACPS in 2003. He was neither instrumental in allocating the benefits of the ACPS to himself, nor had he played any fraud or mischief in order to gain the advantage of ACPS. It is also an admitted position that the benefits of the ACPS are sought to be recovered much after the petitioner superannuated. In these circumstances, the Law laid down by the Hon'ble Supreme Court in Syed Qadir (supra) and Rafiq Masih (supra) would squarely apply to the case of the petitioner.

5. In view of the above, this petition is allowed. The impugned orders dated 27.08.2019 and 15.03.2019 stand quashed and set aside only to the extent of restraining the respondents from recovering the amounts from the petitioner. If any amount from the retiral benefits payable to the petitioner, has been withheld, the same

shall be released within 2 months alongwith admissible interest. In so far as pay refixation now made by the employer, in the light of the mistake that was brought to their notice by the Audit Department, the pensionary benefits can be recalculated in the light of such pay refixation and the petitioner would be eligible for the said reassessed pensionary benefits.

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