

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 8855 OF 2021

The Secretary, Health Department and Ors. ... Petitioners
(Orig. Respondents)

V/s.

Pratap Dnyandeo Mule
At post : Sakat, Taluka : Barshi
District : Solapur ... Respondent
(Orig. Applicant)

Mr. B.V. Samant, Addl. Govt. Pleader for the Petitioners

***CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.***

DATE : 14 DECEMBER 2023

P.C. :-

Heard the learned Addl. Government Pleader.

2. On 15 June 2022, this Petition came up for consideration and the Division Bench (Dipankar Datta, C.J. and M.S. Karnik, J.) passed the following order :-

“1. This writ petition is at the instance of 6 (six) of the respondents in Original Application No. 426 of 2019,

on the file of the Maharashtra Administrative Tribunal, Mumbai (hereafter “the Tribunal”, for short). The petitioners are aggrieved by the judgment and order dated 11th November 2019, whereby the Tribunal held that the claim of the original applicant (the respondent herein) was clearly covered by the decision of the Supreme Court reported in (2015) 4 SCC 334 [State of Punjab and Ors. vs. Rafiq Masih (White Washer)] and, accordingly, it was directed that recovery of any amount paid in excess from the original applicant’s retiral benefits was illegal. A direction followed that amounts recovered from the original applicant be returned to him within 2 (two) months from date.

2. We had heard the writ petition on 8th June 2022. Considering the fact that the original applicant was a Group ‘D’ employee of the State Government, we had orally expressed our prime facie view that the Tribunal was correct in allowing the original application based on its reading of the decision in Rafiq Masih (supra) and that this writ petition ought not to have been instituted by the State. Accordingly, we had granted time to Mr. Samant, learned AGP for the petitioners (State), to obtain instructions.

3. We are informed by Mr. Samant that the original applicant is now entitled to Rs. 2,51,738/- only. We are also informed that the petitioners have commenced the process for sanction of payment of such amount of Rs. 2,51,738/- to the original applicant.

4. In such view of the matter, we defer hearing for a month expressing hope and trust that, in the meanwhile, the petitioners shall leave no stone unturned to return such amount to the original applicant.

5. *List the writ petition on 15 th July 2022 under the heading “for directions”.*

2. Thereafter, the Petition has remained pending and has come up before us for hearing. In the light of the observations made by the Division Bench in the order dated 15 June 2022, we have looked into the controversy. The learned AGP states that he has no instructions and sought to contend that the decision of the Hon’ble Supreme Court in the case of *State of Punjab and Ors. v/s. Rafiq Masih (White Washer)*¹ will not be applicable in the facts of the present case as the Petitioners had given an undertaking on 28 May 2018.

3. Perusal of the impugned order would show that the aspect of undertaking was considered in detail by the Tribunal. The Tribunal has noted the circumstances in which the undertaking was given by the Respondent referring to the affidavit in rejoinder. The Tribunal after going through the language of the undertaking and the explanation of the Respondent opined that he had given such an undertaking as the Respondent’s pension was withheld and there were compelling circumstances.

4. After having observed that the undertaking was given in the circumstances when it cannot be said to be voluntary

¹ (2015) 4 SCC 334

undertaking and that there was no fraud on the part of the Respondent pleaded by the Petitioners and that the Respondent was a Group 'C' employee, the Tribunal opined that the benefit of decision in *Rafiq Masih's* case needs to be given. This finding of the Tribunal which has been considered by the Division Bench when the Petition was came up on 15 June 2022. We do not find that interference in the writ jurisdiction is warranted.

5. Accordingly, we reiterate the observations of the Division Bench in paragraph 3 in the order dated 15 June 2022 and dispose of the Petition directing that the process of payment shall be completed within a period of three months from today.

6. Writ Petition is accordingly disposed of.

MANJUSHA DESHPANDE, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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