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

WRIT PETITION NO. 3045 OF 2021

Smt. Manda wd/o Umrao Badge,
aged about 43 years, Occ. Nil,
R/o Nehru Nagar, Kamptee,
District – Nagpur.

PETITIONER

.....VERSUS.....

1. Divisional Controller,
Maharashtra State Road Transport Corporation,
Ganesh Nagar, Nagpur.

2. Depot Manager,
Maharashtra State Road Transport Corporation,
Ramtek Depot, Ramtek,
Tah. - Ramtek, District - Nagpur.

RESPONDENTS

Shri S.N. Dongre, Advocate h/f Shri A.J. Pathak, Advocate for the petitioner.
Shri Y.R. Chougule, Advocate for the respondents.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
DATE : 18/1/2023
ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

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

2. The husband of the petitioner was employed as Driver with respondent No.1 – Corporation. His pay fixation was initially done vide order dated 15/3/2010. The pay thereafter came to be revised by order dated 2/11/2015. The petitioner's husband attained the age of

superannuation on 30/6/2019. It appears that on the premise that the husband of the petitioner was not entitled to such re-fixation of his salary, the earlier order dated 15/3/2010 was withdrawn and he was informed on 22/7/2020 that an amount of Rs.3,46,174/- would be deducted as that was the amount of over payment. Before the amount of Rs.3,46,174/- could be recovered, the petitioner's husband expired on 22/8/2020. Thereafter, the retiral benefits were paid by the Corporation after deducting the amount of Rs.3,46,174/-. The petitioner as widow issued legal notice on 15/12/2020 and since the action of deduction was sought to be justified by the Corporation she has filed the present Writ Petition challenging the adjustment of the amount overpaid.

3. We have heard the learned Counsel for the parties and we have perused the documents on record. It is seen that the initial pay fixation of the petitioner's husband was done on 15/3/2010. It is not the case that on account of any misrepresentation by the petitioner's husband, such pay fixation came to be undertaken. This pay fixation was subsequently cancelled on 2/11/2015. Before proceeding to deduct the amount of over payment, the Corporation did not hear the petitioner's husband and passed the said order on 22/7/2020. This was done after the petitioner's husband superannuated on 30/6/2019. Undisputedly, within a period of one month, the petitioner's husband expired on

22/8/2020 by which time such deduction had not been undertaken. In these facts, we find that the petitioner would be entitled to rely upon the decision of the Hon'ble Supreme Court in *State of Punjab And Others Vs. Rafiq Masih (White Washer) And Others [(2015) 4 SCC 334]* for the reason that the recovery was being effected post retirement of the employee and that the alleged over payment is for a period prior to five years of the order of recovery. The petitioner's husband was serving on a Class – III post. Moreover, the recovery is being effected from the employee's widow. While considering the said decision, this Court in *Smt. Ujwala Wd/o Rupchand Thakre Vs. Divisional Controller, Maharashtra State Road Transport Corporation, Ganesh Nagar, Nagpur & Anr. [Writ Petition No. 5876/2015* decided on *3/3/2016]* has held such recovery to be impermissible in the light of the law as laid down. In paragraph 8 of the said decision, it has been observed as under :

> "8. *The present is a case where the recoveries if directed would be iniquitous, harsh and also arbitrary to the extent that the same would outweigh the equitable balance of the employer's right to recover. As stated above, the entire exercise of re-fixing the salary of the petitioner's husband as well as the consequent action of recovery was initiated after the death of the petitioner's husband. This aspect itself renders the impugned communications iniquitous and harsh. Moreover, the husband of the petitioner was holding a Class-III post with the respondents. It is not the case of the respondents that the petitioner's husband*

was in any manner responsible for the over payment. In this background, therefore, by following the law as laid down by the Hon'ble Supreme Court in Rafiq Masih (supra) we find that the order of recovery of amounts from the petitioner would be impermissible in law."

4. We thus find that in the facts of the present case, the deduction as made after the death of the petitioner's husband would be iniquitous and harsh. Hence, for the aforesaid reasons, we find the petitioner entitled for necessary relief.

5. Accordingly, the communications dated 30/5/2019 and 22/7/2020 are set aside. The Corporation is directed to refund the amount of Rs.3,46,174/- to the petitioner within a period of six weeks from receipt of copy of the judgment. Failure to pay the said amount within the said period would render the Corporation liable to pay the aforesaid amount with 6% interest till realization.

6. Rule is made absolute in the aforesaid terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.) **(A.S. CHANDURKAR, J.)**

SUMIT