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

Writ Petition No.3155 of 2023

State of Maharashtra and another

Versus

Prabhakar Jagannath Bhute

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	Court's or Judge's order

Ms N.P. Mehta, Assistant Government Pleader for Petitioners.
Shri Y.J. Maheshwari, Counsel for Respondent.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
DATE : 18th JULY, 2023.

1. Heard.

2. The challenge raised in the present writ petition is to the judgment passed by the Maharashtra Administrative Tribunal in Original Application No.336 of 2022 whereby the said Original Application preferred by the respondent challenging the recovery of an amount of Rs.6,57,135/- has been allowed and a direction is issued to pay the respondent the aforesaid amount.

3. It is the case of the respondent that he was employed as Draftsman Grade-III (Tracer) with the Public Works Department. In view of the fact that he attained the age of 45 years, he was granted exemption from appearing in the eligibility examination for promotion from 11-3-2006. The respondent accordingly got the benefit of the aforesaid exemption. On 26-11-2012, the State Government through its Public Works Department informed the Chief Engineers of various divisions that such benefit was not admissible to the Draftsman (Tracer). On that count, the respondent was informed that he was not entitled for such exemption and that the benefit granted to him was revoked. The respondent therefore appeared in the eligibility examination and he cleared the said examination in 2015.

4. By an order dated 9-11-2017, the petitioners informed the respondent that they had given excess payment of Rs.6,57,135/- and by deducting the amount of Rs.5,000/- per month, the same would be recovered from the retiral benefits of the respondent. Being aggrieved, the respondent, who superannuated in the

year 2019, challenged the said action of recovery before the Maharashtra Administrative Tribunal. By the impugned judgment, the Tribunal has held that the recovery effected was against the law laid down by the Hon'ble Supreme Court in *State of Punjab* Versus *Rafiq Masih* **[(2015) 4 SCC 334]**.

5. The learned Assistant Government Pleader for the petitioners submits that the Tribunal erred in observing that the respondent had not filed any undertaking and on that basis, it allowed the prayer made by the respondent. The respondent had in fact given an undertaking on 14-5-2009, in which it is stated that as a result of incorrect fixation of pay or any excess payment deducted in the light of discrepancies notice subsequently, the same was liable to be refunded to the Government. Since the respondent was granted benefit of exemption from appearing in the eligibility examination from 11-3-2006 and that such benefit was subsequently withdrawn on 26-11-2012, he had no authority to withhold the amount of excess payment. The consequential order that was passed on 9-11-2017 had not been challenged and therefore the Tribunal erred in granting any relief to the respondent. Reliance was placed on the decision of the Hon'ble Supreme Court in *High Court of Punjab & Haryana* Versus *Jagdev Singh* **[(2016) 14 SCC 267]** in that regard.

6. On the other hand, the learned counsel for the respondent supported the order passed by the Tribunal. According to him, the giving of such undertaking was of no consequence since it was not a case of incorrect fixation or any excess payment in the light of discrepancies noticed subsequently. The respondent had been granted benefit of exemption from appearing in the eligibility examination from 11-3-2006 and on that basis, such benefit was given. However, such benefit was withdrawn on 26-11-2012. During this period, the respondent had discharged the duties on the said post. Further being a Class-III post, such recovery was not liable to be undertaken. The learned counsel placed reliance on the decisions in *Jayshree Trimbak Takalkar* Versus *Chief Executive Officer, Zilla Parishad, Aurangabad and another* **(2017 SCC OnLine Bom 9420)** and *Aabasaheb Dhondiram Kakde* Versus *State of Maharashtra and others* **(2021 SCC OnLine Bom 8771)**. He therefore submitted that there was no case to interfere in the impugned judgment passed by the Tribunal.

7. After hearing the learned counsel for the parties and after perusing the impugned judgment, we find that the Tribunal has rightly found that no recovery was liable to be made as proposed by the petitioners. The over-payment in question is in view of the benefit of exemption granted to the respondent from appearing in the eligibility examination. The aforesaid exemption came to be withdrawn by way of a policy decision of the petitioners which fact has been pleaded in Paragraph 6 of the writ petition. It is therefore clear that the recovery in question is not in view of any excess payment made to the respondent as a result of incorrect pay fixation or in view of any discrepancies noticed subsequently. Though the Tribunal has noted that there was no undertaking furnished by the respondent, it is clear that the undertaking as given cannot be relied upon in these facts. The undertaking dated 14-5-2009 would apply only if any excess payment is made on account of incorrect fixation of pay or payment of any excess amount in view of any discrepancies noticed subsequently. For the said reason, the ratio of the decision in *Jagdev Singh* (supra) would not be applicable. The Tribunal having relied upon the ratio of the decision in *Rafiq Masih* (supra), we do not find that any error in that regard has been committed by the Tribunal. The respondent being a Class-III employee and the recovery having been undertaken for amounts paid from 11-3-2006 to 26-11-2012, we do not find that any case is made out to interfere in writ jurisdiction.

8. For the aforesaid reasons, the writ petition stands dismissed with no order as to costs.

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

LANJEWAR