



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

WRIT PETITION NO.3893 OF 2018

Petitioners :

1. Vijay s/o Sardarsingh Chungde,
Aged about 66 Years, Occupation : Retired,
R/o Haveli Garden, Krishnagiri Apartment,
F-4, Akashwani Road, Chandrapur.
2. Dattatraya s/o Raghunath Malusare,
Aged about 71 Years, Occupation : Retired,
R/o ST Workshop, Tadoba Road, Tukum,
District Chandrapur.
3. Uddhav s/o Varluji Mohorle,
(Since deceased), Through his L.Rs.
- 3- i) Mrs. Pushpa wd/o Uddhav Moharle (Wife),
Aged about 67 Years, Occupation : Nil,
R/o Nagina Bagh, Ward No.2, Mahadole Layout,
Near Hislop College, Chandrapur,
Tah. and Distrcit Chandrapur.
- 3- ii) Mrs. Yogita w/o Bhalchandra Mahadole (Daughter),
Aged about 43 Years, Occupation : Service,
R/o Govind Nagar, Pimpalgaon Road,
Near Balaji Mangal Karyalaya, Yavatmal,
Tah. and Distrcit Yavatmal.
- 3- iii) Mrs. Kanchan w/o Sharad Zagade (Daughter),
Aged about 38 Years, Occupation : Nil,
R/o Bhagwan Road, Behind Abhishek Hotel,
Utkarsha Nagar, Near Wageshwari Kirana Store,
Tejasvi Pride, Flat No.5, Baramati, Pune-413102.
- 3- iv) Sachin s/o Uddhav Moharle (Son),
Aged about 32 Years, Occupation : Service,
R/o Nagina Bagh, Ward No.2, Mahadole Layout,
Near Hislop College, Chandrapur,
Tah. and Distrcit Chandrapur.
4. Tarachand s/o Bakaram Koche,
Aged about 63 years, Occupation : Retired,
R/o Samata Colony, Near ST Workshop, Tukum,
Chandrapur.

– Versus –

Respondents :

1. State of Maharashtra,
Department of Law and Judiciary,
Mantralaya, Mumbai-32.
Through its Secretary.
2. State of Maharashtra, Department of Finance,
Mantralaya, Mumbai-32.
Through its Secretary.
3. The Hon'ble Registrar,
Hon'ble High Court of Judicature at Bombay,
Fort, Mumbai.
4. The Hon'ble Principal District and Sessions Judge,
Gadchiroli, District Court, Gadchiroli.
5. The Hon'ble Principal District and Sessions Judge,
Chandrapur, District Court Chandrapur.
6. The Accountant General,
Maharashtra-II (O & E), Civil Lines, Nagpur.
7. The Joint Director,
Accounts and Treasuries, State of Maharashtra,
Near Collectorate Building, Civil Lines, Nagpur.

 Mr. V.P. Marpakwar, Advocate for the Petitioners.
 Mr. M.K. Pathan, A.G.P for Respondent Nos.1, 2, 6 & 7.
 Mr. Firdos T. Mirza, Advocate for Respondent Nos.3 to 5.

CORAM : ROHIT B. DEO AND M.W. CHANDWANI, JJ.
DATE : 19th JULY, 2023.

J U D G M E N T : (Per M.W. Chandwani, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the petitioners.

02] The petition seeks declaration that reduction of pay done by the respondents is illegal and further seeks direction to cure the said anomaly and to refund the amount, so recovered, from the pension and pensionary benefits of the petitioners.

03] The petitioners were working as Senior Clerks with respondent No.4. In the wake of the Government Resolution dated 06/08/2002, whereby all the Government servants working in the Naxalite area in Gadchiroli and Chandrapur districts were granted one step higher pay scale. The petitioners, who were Senior Clerks, were placed in the next pay scale of Assistant Superintendent. The petitioners retired in the year 2009-2010. Upon retirement, they were receiving pension on the basis of last pay drawn.

04] By the Government Circular dated 17/12/2013, it was informed by the Officials of the State Government that while calculating the pension of an employee, who retired on or after 01/01/2006, the original pay scale of the actual post held by him (by excluding the one step higher pay scale), has to be considered and it was directed to recover amount paid in excess to the employee, from the pension of the employee. Accordingly, the pension of the petitioners, who were drawing pension on the basis of the pay scale of Rs.6500-200-10500 was reduced. Further, the respondents started recovery of the excess amount paid to the petitioners by way of pension. Feeling aggrieved with the said action,

this petition came to be filed for restoring the pension on the basis of the pay scale of Rs.6500-200-10500 and further direction for refunding of the amount recovered from the petitioners is also sought.

05] We have heard the learned Counsel for the petitioners as well as the respondents and gone through the relevant Government Resolutions/Circulars.

06] So far as direction to compute the pension on the basis of pay scale of actual post held by the employees is concerned, we are of the view that the Government Circular dated 17/12/2013 is, in any way, not in violation of the provisions of Rules 9(36) and 60(1) of the Maharashtra Civil Services (Pension) Rules, 1982. The said Circular dated 17/12/2013 is in consonance with the aforesaid Rules.

07] As far as the recovery from pension of excess amount paid to the petitioners is concerned, we need not to delve deeper the issue, since the case of the petitioners would be squarely covered by the decision of the Supreme Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) and others – (2015) 4 SCC 334, wherein the Supreme Court has postulated the situations, wherein the recoveries by the employers are impermissible in law. The relevant paragraph 18 of the decision is reproduced below :

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

08] The cases of the petitioners are covered by situations Nos.(i) and (ii) mentioned above. In view of this, the writ petition is partly allowed. The impugned order of the respondents shall stand set aside only to the extent of

recovery of excess amount paid to the petitioners from their pension. The amount so recovered shall be refunded to the petitioners within eight weeks from the date of the order.

09] Rule accordingly with no order as to costs.

(M.W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

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