

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

WRIT PETITION 2256 OF 2018

Purushottam Manikrao Ghate,
Aged 60 yrs, Occ. Retired,
R/o. Civil Lines, Daryapur,
Tahsil Daryapur, District Amravati

.....PETITIONER

...V E R S U S...

Municipal Council Daryapur,
through its Chief Executive Officer,
Nagar Parishad, Daryapur,
District Amravati

..RESPONDENTS

Mr. A.A. Dhawas, counsel for petitioner.
Mr. M.I. Dhattrak, counsel for respondent.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 31.03.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. With consent,
the petition is finally heard.

3. The petitioner has superannuated from the
establishment of Daryapur Municipal Council on 31.7.2016 having
discharged duty as Clerk with effect from 15.10.1996.

4. After the superannuation of the petitioner, the audit section/department has forwarded note sheet dated 28.1.2018, which is treated as the order impugned, which opines that recovery of Rs. 1,57,516/- is due from the retiral benefits of the petitioner on the premise that he was wrongly granted second benefit of the Assured Career Progression Scheme. We have given anxious consideration to the pleadings in the petition and the affidavit in response, and we note that it is not even the case of the employer that the purported incorrect benefit was due to any fault much less fraud or misrepresentation on behalf of the petitioner. The petitioner having superannuated in July, 2016, we are not inclined to examine the merits of the controversy.

5. Suffice it to observe, that the learned counsel for the petitioner Mr. A.A. Dhawas is right in relying on 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*.

6. We, therefore, quash and set aside the note sheet / order which holds the petitioner liable for the recovery. We may note that while the audit sheet records that the petitioner has wrongly received Rs. 1,57,516/-, the recovery is to the extent of

Rs. 81,494/- by factoring in and / or adjusting the retiral dues which in the perception of the Council are payable to the petitioner.

7. Be that as it may, since we have found that the order of recovery is patently illegal, we declare that the Council shall not be entitled to withheld or recover any amount from the retiral benefits of the petitioner, and if any amount is withheld, the same shall be released in favour of the petitioner within the next four weeks.

8. The petition is allowed in the aforestated terms.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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