

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

WRIT PETITION NO. 3011 OF 2013

Amendment carried
out as per Court's
order dated
04.02.2015
(22.12.2015)
Sd/- Counsel for
Petitioner

1. Dr.Mrs. Shyla w/o T.O.Abraham, (Dead through her LR)
 Abraham s/o Thundiparambil Oonnunny,
 Aged about 64 years, Occ. Free Lancer Reporter
 R/o.31, Pushpakunj Society, Arni Road,
 Yavatmal. **PETITIONER**

...VERSUS...

1. The State of Maharashtra,
 through its Secretary, Higher and
 Technical Education Department,
 Mantralaya, Mumbai-400 032.
2. The Joint Director,
 Higher Education Department,
 Amravati Region, Amravati.
3. The Regional Performance Assessment
 Committee, through its Chairman,
 Office at the Sant Gadge Baba Amravati
 University,
 Campus, Amravati.
4. The Principal,
 Lok Nayak Bapuji Aney Mahila
 Mahavidyalaya,
 Yavatmal-445 001. **RESPONDENTS**

 Ms Gauri Venkatraman, Advocate for petitioner.

Ms S.S.Jachak, Assistant Government Pleader for respondent nos. 1 and 2.

Shri R.L.Khapre, Senior Advocate with Shri Vidit Lohiya, Advocate for
 respondent no. 4.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

ARGUMENTS WERE HEARD ON : 03.02.2023

JUDGMENT IS PRONOUNCED ON : 28.04.2023

JUDGMENT (Per A.S.CHANDURKAR, J.)

Challenge raised in this writ petition is to the communication dated 31.05.2013 issued by the respondent no.4-Principal of the College where the wife of the present petitioner was serving as Lecturer in the subject of English. During pendency of the writ petition the original petitioner expired and her husband has been brought on record as her legal heir. By amending the writ petition, a challenge is also raised to the recovery of amount of Rs.5,56,477/- which according to the respondent no.2-Joint Director, Higher Education Department, Amravati was as a result of excess payment made to the original petitioner by incorrectly determining the date for entitlement to benefit of senior grade and selection grade pay-scale.

2. The facts relevant for considering the challenge as raised are that the original petitioner was appointed as Lecturer in English on 22.11.1993 and her appointment was approved on 20.03.1997. The original petitioner acquired Ph.D. qualification on 16.10.2003. She was granted benefit of selection grade from 01.08.2007 and her pay fixation was approved on 01.07.2009. The original petitioner was to superannuate at the age of 60 years on 30.06.2011. However, in view of the Government Resolution dated 01.09.2012 she became entitled to continue in service till the age of 62 years. Accordingly, the original petitioner was again permitted to join in

service on 12.09.2012 and was to superannuate on 30.06.2013 when she would have attained the age of 62 years. A notice to that effect was issued by the fourth respondent on 31.05.2013. Unfortunately, the original petitioner expired on 20.06.2013 before attaining the age of 62 years. Thereafter on 24.07.2013 the Joint Director of Higher Education issued a communication to the College stating therein that since the original petitioner obtained Ph.D. qualification on 16.10.2003, she would be entitled for senior grade pay-scale of 15600-39100 with Grade Pay of Rs.7000/- on 16.10.2007. It was further stated that the original petitioner would be entitled for selection grade pay-scale of 15600-39100 with Grade Pay of Rs.8000/- from 16.10.2012. Since such benefit was granted from an earlier date, it was directed that the College should determine the amount of over payment as made and submit the calculations in that regard. For that purpose, the original service book was returned to the Principal. Acting on the aforesaid basis, amount of Rs.5,56,477/- was found to be the amount of over payment and the same was recovered from the retiral benefits of the original petitioner. It is in this factual backdrop that the writ petition is required to be adjudicated.

3. Ms Gauri Venkatraman, learned counsel for the petitioner submitted that the action of recovery of Rs.5,56,477/- from the service benefits of the original petitioner was highly unjustified. These benefits were

given to the original petitioner in accordance with law after considering the relevant executive instructions by a duly constituted Committee in that regard. The original petitioner received the said benefits for the entire service career during her life time. The recovery made was after her death and such recovery was not permissible in the light of the law laid down by the Hon'ble Supreme Court in *Syed Abdul Qadir and others vs. State of Bihar and others (2009) 3 SCC 475*. The original petitioner could not be blamed for receiving such amounts and there was no allegation that there was any misrepresentation made or fraud practised by the original petitioner. It was further submitted that the respondents were not justified in relying upon the Government Resolution dated 18.10.2001 when in fact, the earlier Government Resolution dated 11.12.1999 was applicable to the facts of the present case. After considering the relevant Government Resolution the service book had been corrected and therefore there was no justification on the part of the respondents in initiating the impugned action. On the contrary, despite being held entitled to continue in service till the age of 62 years, the original petitioner had not been paid her arrears of salary for the period from July 2011 to November 2012 which was an amount of Rs.6,24,139/-. The learned counsel also placed reliance on the decisions in *Mahesh Bapurao Swami, Dist. Hingoli vs. State of Maharashtra (2013) SCC Online Bom 1148* as well as the judgment of the Division Bench in *Writ Petition No.11477 of 2010 (Asha Ramdas Bidkar and others vs. State of*

Maharashtra and others) decided on 01.08.2013 at the Aurangabad Bench. It was thus submitted that the prayers made in the writ petition ought to be granted.

4. Ms S.S.Jachak, learned Assistant Government Pleader for the respondent nos. 1 and 2 opposed the aforesaid submissions and relied upon the affidavit in reply as well as return filed by the said respondents. At the outset, it was submitted that though the age of superannuation was extended till the age of 62 years, it had been wrongly stated that the original petitioner was entitled to continue in service till 30.06.2014. The correct the date of superannuation was 30.06.2013. It was submitted that since the petitioner had superannuated on 30.06.2011 after attaining the age of 60 years, she started receiving pension. Having received the amount of pension from 01.07.2011 to 11.09.2012 which was the date she was again taken back in service, the original petitioner was not entitled for salary for the aforesaid period since she had not surrendered the amount of pension that was received by her. The original petitioner worked for the period from 12.09.2012 to 17.06.2013 and she had received her salary for the aforesaid period. In terms of the Government Resolution dated 18.10.2001 the original petitioner was entitled to senior grade pay-scale after period of four years of completing her Ph.D. which was 16.10.2007 and selection grade pay-scale after a period of five years thereafter. However, these higher pay-

scales were granted to the original petitioner from 16.10.2003 and on 01.08.2007 which resulted in over payment to her. These amounts were thus being recovered from the service benefits of the original petitioner. Since the original petitioner had expired prior to attaining the age of superannuation of 62 years, it could not be said that the recovery proposed was not permissible. It was thus submitted that there was no case made out to interfere in writ petition.

5. Shri R.L.Khapre, learned Senior Advocate for the respondent no.4 supported the stand taken by the respondent nos. 1 and 2. According to him, the recovery of the amount of Rs.5,56,477/- was justified since the original petitioner had been granted benefit of senior grade and selection grade pay-scale from an earlier date when in fact, she was not entitled to the same. In view of the directions issued by the Joint Director of Higher Education, the respondent no.4 had taken necessary steps. Since the aforesaid amount had been rightly recovered by the respondent no.2, there was no reason to interfere in writ jurisdiction.

6. We have heard the learned counsel for the parties and we have perused the documents on record. It is not in dispute that on 16.10.2003 the original petitioner acquired Ph. D. qualification after which two additional increments were granted to her from 01.10.2003 and selection grade scale was granted from 01.08.2007. The pay fixation was also duly approved.

The original petitioner received the aforesaid benefits and retired on superannuation on 30.06.2011. Subsequently, by virtue of increase in the age of retirement to 62 years, she re-joined duty on 12.09.2012 and she was to retire on 30.06.2013. However, prior thereto the original petitioner expired on 20.06.2013. It is only thereafter that on 24.07.2013 the Joint Director of Higher Education issued a communication to the Principal of the College stating therein that the original petitioner would be entitled to senior grade scale from 16.10.2007 and selection grade scale from 16.10.2012. The Principal was directed to determine the over payment made and to recover the same.

7. In this context, two aspects would have to be considered. Firstly, whether there has been over payment to the original petitioner on account of incorrectly granting her benefit of senior grade scale and selection grade scale by virtue of acquiring the Ph.D. qualification. Secondly, if such over payment has been found to be made, whether the excess amount is liable to be recovered after the death of the original petitioner. Insofar as entitlement to the benefit of senior grade scale and selection grade scale to the original petitioner is concerned, it is clear that the entitlement to such benefit is governed by the provisions of the Government Resolution dated 11.12.1999. The minimum length of service for being eligible to receive senior grade scale is four years after acquiring Ph. D. qualification and for being eligible to

receive selection grade scale the minimum service as Lecturer (Senior Scale) would be five years. On this basis, the original petitioner having acquired Ph.D qualification on 16.10.2003 she would be entitled to senior grade scale after four years which would be 16.10.2007. After serving on the post of Lecturer (Senior Scale) for five years, she would be entitled to be placed in selection grade on 16.10.2012. The aforesaid determination of entitlement is as per the Government Resolution dated 11.12.1999. The Circular dated 18.10.2001 pertains to regularisation of services of those Lecturers who have not acquired NET/SET qualifications having been appointed prior to 11.12.1999. We therefore find that though the original petitioner was entitled to such benefit after period of four years and five years respectively after acquiring the Ph. D. qualification, the same was granted to her immediately after acquiring Ph. D. It is thus clear that there has, in fact, been over payment to the original petitioner to the tune of Rs.5,56,477/- since she was not entitled to receive higher pay scale prior to 16.10.2007 and 16.10.2012 respectively. No fault therefore can be found with the stand taken by the respondent nos. 1 and 2 that there had in fact been over payment to the original petitioner.

8. Having found that there had in fact been over payment of Rs.5,56,477/- which amount has already been recovered, the question to be considered is whether such recovery was justified in the facts of the case.

It is not the case of the respondents that on account of any misrepresentation or fraud practiced by the original petitioner, such over payment on account of wrong fixation came to be made. It is further to be noted that such over payment came to be made from 16.10.2003 and continued till the time the original petitioner was in service till 20.06.2013 when she expired. In this regard, the Hon'ble Supreme Court in *Syed Abdul Qadir and others* (supra) has observed in paragraphs 57, 58 and 59 as under:

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by Courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, Courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Gangaram v. Director, Col. B. J.

Akkara (Retd.) v. Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur.

59. Undoubtedly, the excess amount that has been paid to the appellants teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

The aforesaid decision has been subsequently followed in *Thomas Daniel vs. State of Kerala and others [AIR 2022 SC 2153]*. In the said case, recovery sought to be made after retirement and passage of ten years therefrom was held to be unjustified.

9. We find in the facts of the present case that the law as laid down in *Syed Abdul Qadir and others* (supra) would be attracted for the reason that over payment was made on account of erroneous interpretation of the

relevant Government Resolutions by the respondent nos. 1 and 2. At no point of time was the original petitioner responsible for being granted such benefit. This benefit was granted for a period of almost ten years till the original petitioner was in service. After her death, by the communication dated 24.07.2013 the over payment was sought to be recovered for the first time. In these facts since the original petitioner expired on 20.06.2013 and the recovery was made more than four years after her death in absence of she being responsible for such over payment, we find that judicial discretion deserves to be exercised in favour of the petitioner by holding that the recovery undertaken was unjustified as the same results in hardship to the legal heir of the original petitioner. We are therefore inclined to direct refund of the excess amount that has been recovered by the respondent nos. 1 and 2.

10. Insofar as the prayer made for grant of arrears of salary from 01.07.2011 to 11.09.2012 is concerned, we are not inclined to grant that relief for the reason that the original petitioner received pension for the aforesaid period pursuant to her superannuation at the age of 60 years. The original petitioner did not surrender the aforesaid amount of pension received from 01.07.2011 to 11.09.2012. For that reason coupled with principle of no work no pay, it is held that the original petitioner would not be entitled to claim arrears of salary for the aforesaid period.

11. Hence for the aforesaid reasons, it is directed that within a period of eight weeks from today, the respondent nos. 1 and 2 shall refund the amount of Rs.5,56,477/- to the present petitioner. If the said amount is not refunded within the aforesaid period, the same shall carry interest @4% per annum that would be payable from the expiry of eight weeks till releasation.

12. Rule is made partly allowed in aforesaid terms with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.