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

WRIT PETITION NO. 849/2021

Anil Vasantrao Padmawar, Aged 54 yrs., Occ: Private,
R/o Flat No.G-8, P.H. Nagar, Bagad Khidki Road,
Bhanapeth Ward, Tal. & Dist. Chandrapur. **PETITIONER**

.....VERSUS.....

1. The Zilla Parishad, Chandrapur, through its Chief Executive Officer.
2. The Deputy Chief Audit and Finance Officer, Zilla Parishad, Chandrapur. **RESPONDENTS**

Shri P.S. Kshirsagar, counsel for the petitioner.
Shri J.B. Kasat, counsel for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : JANUARY 03, 2023.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard by issuing **RULE** and making it returnable forthwith.

2. The wife of the petitioner was working as an Assistant Teacher at Panchayat Samiti, Chandrapur, District Chandrapur. The said employee was required to pass the Computer Proficiency Examination in terms of the Government Resolution dated 20.07.2002 as modified from time to time till 31.07.2007. She however failed to clear the said examination and was thus not entitled to annual increments. According

to the Zilla Parishad despite aforesaid, excess payment was made to said employee. The petitioner's wife expired on 06.03.2017. While settling the dues of said employee the Zilla Parishad deducted an amount of Rs.4,11,656/- from the amount of pensionary benefits. Being aggrieved by the aforesaid the order dated 31.10.2017 has been challenged herein.

3. It is submitted by the learned counsel for the petitioner that recovery of the alleged excess payment after the death of the employee was not permissible. It was undisputed that the employee expired on 06.03.2017 and the impugned recovery was being effected on 31.10.2017. In view of the judgment of the Hon'ble Supreme Court in *State of Punjab & Others Versus Rafiq Masih (Whitewasher)*, [**(2014) 8 SCC 883**] such deduction was impermissible. The said recovery was also effected without giving any due notice to the legal heirs of the deceased employee. On these counts, the impugned order was liable to be set aside.

4. The learned counsel appearing for the Zilla Parishad opposed the aforesaid submissions. It was submitted that the petitioner's wife during her lifetime had submitted an undertaking stating therein that if it was found that there was any excess payment made to her she would not object to its adjustment/recovery. Since the said employee did not pass

the Computer Proficiency Examination she was not entitled for annual increments. Since it was found that there was excess payment made to her, that excess payment was being recovered from the legal heirs. Hence no interference was called for.

5. We have heard the learned counsel for the parties and we have perused the documents on record. The fact that the petitioner's wife did not pass the requisite examination while in service and expired thereafter is not in dispute. It is on that count that the alleged excess payment is being recovered from the pensionary benefits payable to the legal heirs. According to the Zilla Parishad the said employee during her lifetime had submitted an undertaking that she would not object to adjustment/ recovery of any excess payment made. We however find that the undertaking placed on record does not bear any date. We also note that under Section 134-A of the Maharashtra Civil Services (Pension) Rules, 1981 (for short, 'the Rules of 1982') a reasonable opportunity is required to be given for showing cause why such deduction should not be made. In the present case though the employee in question has expired her legal heirs are entitled to show such cause why the excess amount, if any, is not liable to be recovered. Such opportunity has not been given to the legal heirs and there is no denial to the specific averments made by the petitioner in that regard.

6. In the aforesaid facts, the following order would serve the ends of justice:-

(a) The recovery of amount of Rs.4,11,656/- is set aside since the same has been directed without complying with the provisions of Rule 134-A of the Rules of 1982.

(b) The Zilla Parishad shall in compliance with the aforesaid Rule grant an opportunity of showing cause to the petitioner as to why the alleged excess amount should not be recovered.

(c) After giving due notice to the petitioner and considering his response if any, the Zilla Parishad is free to take the necessary decision in that regard in accordance with law.

(d) The necessary exercise be completed within a period of three months from receiving the copy of this judgment.

(e) The points raised by the petitioner on merits are kept open.

7. The writ petition is disposed of with aforesaid directions. Rule accordingly. No costs.

(**URMILA JOSHI-PHALKE, J.**) (**A.S. CHANDURKAR, J.**)

APTE

Signed By: Digitally signed byROHIT DATTATRAYA APTE
Signing Date:10.01.2023 18:14