



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

WRIT PETITION NO. 7599 OF 2022

Indrajeet s/o Laxman Patle
Aged about 60 years,
Occupation – Nil, R/o. T.B. Toli,
At and post – Gondia,
Tah. & District – Gondia

} ... Petitioner

Versus

1. State of Maharashtra,
Through its Secretary,
General Administrative Department,
Mantralaya, Mumbai – 400 032.
2. Zilla Parishad, Gondia,
Through its Chief Executive Officer,
Gondia, Tah. & District – Gondia.
3. Deputy Chief Accounts and Finance Officer,
Zilla Parishad, Gondia,
Tah. & District – Gondia.
4. Block Development Officer,
Panchayat Samiti, Gondia,
Tah. & District – Gondia.

} ... Respondents

Mr. I.N. Choudhari, Advocate for petitioner.

Ms. Ritu Sharma, AGP for respondent No.1.

Mr. A.M. Dixit, Advocate for respondent Nos.2 to 4.

CORAM : SMT. ANUJA PRABHUDESSAI, AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT : 11.12.2023.

DATE OF PRONOUNCEMENT OF JUDGMENT : 22.12.2023

JUDGMENT : (PER: Mrs.Anuja Prabhudessai, J)

RULE. Rule made returnable forthwith. Heard finally by consent of both the learned counsel for the parties.

2. By this petition, filed under Article 226 of the Constitution of India, the petitioner seeks following reliefs :

(i) To quash and set aside order dated 18.12.2018 issued by respondent No.3 – The Deputy Chief Accounts and Finance Officer, Zilla Parishad, Gondia, to the extent of recovery of Rs.2,30,456/- towards alleged computer recovery and held that the impugned recovery is bad and illegal ;

(ii) Direct the respondents to pay the recovered amount of Rs.2,30,456/- towards computer recovery amount from the death cum service gratuity amount as per order dated 18.12.2018 to the petitioner along with 18% interest.

3. The brief facts necessary to decide this petition are as under :-

The wife of the petitioner was appointed on 21.11.1986 as Assistant Teacher in Primary School run by Zilla Parishad, Bhandara, Tah. & District – Bhandara. She was later on transferred to Zilla Parishad Primary School, Kudwa (Gondia). She died on 03.12.2017 while in service.

4. The respondent No.3 – Deputy Chief Accounts and Finance Officer, Zilla Parishad, Gondia, issued Family Pension payment release order and Death cum Service Gratuity release order on 13.12.2018 and 18.12.2018, respectively. The respondent no.3, by order dated 18.12.2018 withheld an amount of Rs.2,30,456/- from the death cum retiral benefits payable to the petitioner on the ground that the wife of the petitioner had not submitted Computer Training Certificate within the prescribed time.

5. The reply filed by the respondents indicates that the recovery is directed on the premise that wife of the petitioner had failed to submit the Computer Training Certificate on or before 31.12.2007. It is further submitted that the wife of the petitioner, while opting for the benefit of pay scale, had given an undertaking to refund the excess payment, if any. It is stated that the petitioner is bound by the said undertaking.

6. Learned counsel for the petitioner submits that the respondent has neither conducted any enquiry nor sought to recover the excess amount during the life time of the deceased employee. It is stated that such belated recovery is arbitrary, illegal and unjustified

and would result in immense mental trauma and hardship. He has placed reliance on the decision of the Apex Court in ***State of Punjab .vs. Rafiq Masih***, reported at ***(2014) 8 SCC 883*** and the decision of Division Bench of this Court in ***Writ Petition No. 2566/2022 (Smt. Pramila Wd/o Purushottam Bopche .vs. State of Maharashtra and others)*** with bunch of petitions.

7. Per contra, learned counsel for respondents- Zilla Parishad submits that while opting for the benefit of pay-scale, the deceased employee had furnished an undertaking that the excess amount, if any, would be refunded. He relied on the decision of the Apex Court in ***State of Punjab .vs. Jagdeo Singh***, reported at ***(2016) 14 SCC 267***. He submits that the petitioner is bound by the said undertaking and cannot avoid recovery of the amount paid in excess.

8. We have perused the records and considered the submissions made by learned counsel for the respective parties.

9. Before advertng to the facts of the present case, it would be useful to refer to the decision of the Apex Court in ***Thomas Danial .vs. State of Kerala***, reported at ***2022 SCC Online SC 536***

=*(2022 Live Law (SC) 238)*, in which the the Apex Court has observed as follows :

“9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or 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, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

10. In the instant case, the records indicate that the wife of the petitioner was required to furnish Computer Training Certificate on or before 31.12.2007. She was paid the increment even though she had failed to submit the said certificate. The amount paid in excess is sought to be recovered after death of the employee on the basis of an

undertaking given by her at the time of opting for benefit of pay-scale to refund the excess amount, if any. Such recovery is sought by totally ignoring the fact that said computer certificate was in fact submitted in the year 2014. The facts of the case do not indicate that the amount was paid on the basis of misrepresentation or fraud on the part of deceased employee. Moreover, no action was taken during the life time of the employee. In such circumstances, the action of recovery is arbitrary, illegal, unjustified and would entail undue hardship and hence, the same cannot be approved.

11. In the light of the above, the writ petition is allowed in terms of prayer clauses (i) and (ii). Rule is made absolute. No order as to costs.

[MRS.VRUSHALI V. JOSHI, J.] [SMT. ANUJA PRABHUDESSAI J.]