IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1190 OF 2024

Smt. Ranjana Pundlikrao Makane
Age : 58, Occu.: Retired
R/o: Pathri, Tq. Phulambri,
District Chhatrapati Sambhajinagar … PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary, General Administration Department,
Mantralaya, Mumbai – 32

2. The Chief Executive Officer,
Zilla Parishad, Chhatrapati Sambhajinagar,
District Chhatrapati Sambhajinagar.

3. The Chief Accountant and Finance Officer,
Zilla Parishad, Chhatrapati Sambhajinagar,
District Chhatrapati Sambhajinagar.

4. The Medical Officer,
Primary Health Center, Panwadod, Tq. Sillod,
District Chhatrapati Sambhajinagar. … RESPONDENTS

Mr. Y. B. Bolkar, Advocate h/f Mr. K. B. Jadhav, Advocate for the Petitioner
Mr. S. K. Tambe, AGP for the Respondent/State
Mr. S. R. Dheple, Advocate for Respondent Nos. 2 to 4.

CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.

DATE : 18th MARCH, 2024

ORAL JUDGMENT (PER - RAVINDRA V. GHUGE) :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The Petitioner has put forth prayer clauses 'B', 'C', 'D' and 'E' as under:

> *" B) By way of appropriate writ order or direction in the like nature, this Hon'ble High Court may kindly quash and set aside the impugned order dated 21/10/2023 passed by the respondent No.4, thereby recommending the recovery of amount from the monetary benefits payable to the petitioner on account of wrong pay fixation, as the same is wholly unjustified and contrary to the law laid down by the Hon'ble Apex Court in the case of State of Punjab and others V/s. Rafiq Masih (White Washer) and others reported in 2015(4) SCC 334.*
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> *C) By way of appropriate writ order or direction in the like nature, this Hon'ble High Court may kindly direct the respondent Nos. 2 to 4 to pay the retirement benefits and the pension in favour of the petitioner, on account of attaining the age of superannuation on 31/10/2023, without effecting any recovery as recommended in the order dated 21/10/2023 passed by the respondent No.4.*
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> *D) Pending hearing and final disposal fo the Writ Petition, this Hon'ble High Court may kindly stay and suspend the effect, implementation and operation of the impugned order dated 21/10/2023 passed by the respondent No.4, thereby recommending the recovery of amount from the monetary benefits payable to the petitioner.*
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> *E) Pending hearing and final disposal of the Writ Petition, this Hon'ble High Court may kindly direct the respondent Nos. 2 to 4 to pay the retirement benefits and the pension in favour of the petitioner, on account of attaining the age of superannuation on 31/10/2023, without effecting any recovery as recommended in the order dated 21/10/2023 passed by the respondent No.4."*

3. The Petitioner was appointed as a Health Worker on 31st March, 1986 in the Zilla Parishad, Aurangabad. The pay fixation of the Petitioner was revised and sanctioned at the senior post pay scale on 30th

September, 2013. On 26th February, 2019, the State Government issued a GR and directed not to effect any recovery from retired Class-3 and Class-4 employees in cases where excess payments have been made on account of wrong pay fixation. It is also provided that there shall not be any recovery from employees who have been paid excess payments for more than five years. Clause 1 (aa) of the said Government Resolution further provides that recovery should not be made from the candidates who are about to attain the age of superannuation.

4. The Petitioner contends that Respondent No.2 promoted her to the post of Health Assistant and posted her at the Primary Health Center, Panwadod, Tq. Sillod, District Aurangabad vide the order dated 29th July, 2021. The Petitioner has superannuated on 31st October, 2023. 10 days prior to her retirement, Respondent No. 4 passed an order on 21st October, 2023 revising the pay fixation and recorded that, as the Step Ladder Course was completed by the Petitioner in 2009, the benefits would not be payable to her from the year 1998. Recovery was ordered. Hence, this Writ Petition.

5. We have considered the submissions of the learned Advocates for the respective sides. The learned Advocate Mr. Dheple has drawn our attention to the affidavit-in-reply dated 5th March, 2024 and the accompanying documents. He relies upon the judgment delivered by this Court in ***Ananda s/o Vikram Baviskar Vs. State of Maharashtra and***

others, 2022(2) Mh.L.J., 698 and the order of this Court dated 7th February, 2024 passed in ***Writ Petition No. 6422 of 2019 (Meera Narayan Unawane and others Vs. The State of Maharashtra and others),*** at Aurangabad.

6. At page Nos. 50 and 51 of the Petition paper book, the Zilla Parishad has produced the undertakings issued by the Petitioner. At page No. 50, the undertaking does not have any date. The learned Advocate for the Petitioner fairly submits that the said undertaking was extracted from the Petitioner some time in 2013. The Petitioner superannuated on 31st October, 2023. The learned Advocate for the Petitioner submits, on instructions, that the Petitioner is agreeable for recovery of excess amounts from 2013 on wards till her superannuation. However, she has a strong objection for recovery of the amounts from March, 1998 as per the impugned order dated 21st October, 2023.

7. The learned Advocate for the Zilla Parishad opposes the said request and submits that the recovery has to be made from 1998.

8. We have perused the impugned order dated 21st October, 2023. In the said order, the Zilla Parishad has referred to the "Stamp Lender Course". The learned Advocate for the Zilla Parishad submits that this is a mistake and it should actually read as "Step Ladder Course". It is conceded that the Zilla Parishad did not issue any notice of hearing to

the Petitioner to show cause as to why the pay fixation should not be revised/corrected and recovery should be initiated.

9. The learned Advocate for the Zilla Parishad submits that the Petitioner can prefer an Appeal to the CEO of Zilla Parishad for challenging the impugned order passed by the Medical Officer, Primary Health Center, Panwadod. We are not impressed by the said submission for the reason that in thousand of cases, this Court has entertained such Petitions considering the grave urgency in the light of employers waking up after 10 or 20 years, for initiating recoveries after superannuation of the employees. With such laches on the part of the employers, the Petitioner can't be relegated to a statutory remedy available, in the light of the judgment delivered by the Hon'ble Supreme Court in ***Ram And Shyam Company vs State Of Haryana And Ors (1985) 3 SCC 267***. Paragraph No. 9 in ***Ram And Shyam Company*** (supra) reads thus:

> *"9. Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise v. Jainson Hosiery Industries rejected the writ petition observing that 'the petitioner who invokes the extraordinary jurisdiction of the court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him'. We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative*

remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in The State of U.P. v. Mohammad Nooh it is observed "that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy". It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The clutch of appeal from Ceasar to Ceasar's wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court."

. Hence, we are not entertaining this objection of the employer.

10. In ***Syed Abdul Quadir Vs. State of Bihar and others,***

2009(3) SCC 475 and ***State of Punjab and others V/s. Rafiq Masih (White Washer) and others reported in 2015(4) SCC 334,*** the Hon'ble Supreme Court has culled out principles as to when deductions or recoveries can be ordered against employees. It is well settled that recoveries at the fag end of the career from Class-3 and Class-4 employees should not be initiated. Even the State GR prohibits recoveries. For the sake of brevity, paragraph 18 of the judgment in ***Rafiq Masih*** (supra), is reproduced here under :-

> *"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."*

11. In the judgment delivered by the Hon'ble Supreme Court in the ***High Court of Punjab and Haryana and Others Vs. Jagdev Singh, 2016 AIR (SCW) 3523***, it has been held in paragraph 11 of the said judgment, as under:-

> *"11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."*

12. On the point of recovery, the Petitioner makes a fair statement that as the undertaking was executed in 2013, she is willing to suffer recovery from 2013 till 31st October, 2023 when she superannuated. Admittedly, the Petitioner has not been issued any notice of hearing before revising the pay fixation. On this account, the Petitioner succeeds.

13. In view of the above, **this Writ Petition is partly allowed**. The impugned order dated 21st October, 2023 is quashed and set aside to the extent of, a) the revision in the pay scale (without issuance of notice) and, b) recovery from 1998 up to 30/09/2013. The recovery from 1st

October, 2013 till 31st October, 2023 shall be effected. Needless to state, after deducting the recoverable amount for the period 1st October, 2013 till 31st October, 2023, all retiral monetary benefits including pensionary benefits, shall be paid to the Petitioner within a period of 90 days.

14. On the issue of revision in the pay fixation post retirement of the Petitioner, we permit the employer to issue a notice to the Petitioner and after granting her a reasonable opportunity of hearing, in the form of tendering a written submission, an appropriate order be passed. If the Petitioner is aggrieved by the said order, she would be at liberty to avail of a remedy as may be permissible in law taking recourse to Rule 14 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal), Rules 1964.

15. Rule is made partly absolute in the above terms.

(R. M. JOSHI, J.) **(RAVINDRA V. GHUGE, J.)**

ssp