IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2803 OF 2024

Smt. Mangala Ramgir Giri,
Age : 59 Years, Occupation : Retired/Pensioner,
Resident of Mahasoba Nagar,
Shrikrupa P.No. 32, G. No. 165/2,
Sadgurunagar, Harsool,
Taluka and District Aurangabad … PETITIONER

Versus

1. The State of Maharashtra
Through Secretary Municipal Corporations,
Mantralaya, Mumbai-400032.
2. The Commissioner,
Municipal Corporation Aurangabad
3. The Education Officer,
Municipal Corporation Aurangabad

… RESPONDENT

Ms. A. N. Ansari, Advocate for the Petitioner
Ms. Neha Kamble, AGP for the Respondent/State
Mr. S. K. Kamble, Advocate h/f Mr. S. P. Urgunde, Advocate for Respondent Nos. 2 and 3

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

DATE: 18th APRIL, 2024

ORDER (PER – R. M. JOSHI, J.) :-

1. The Petitioner being aggrieved by the order letter No. MCA/Education/332/2022 dated 7th April, 2022 issued by the Commissioner, Municipal Corporation, Aurangabad for recovery from retiral benefits on account of not passing MS-CIT examination in time, has preferred this Petition.

2. It is the case of the Petitioner that she was appointed as Assistant Teacher Primary on 2nd September, 1987 and since then till the completion of her tenure of service she performed her duties continuously. On 30th April, 2022 she retired from service on attaining age of superannuation. It is her case that during the course of service the Government has adopted policy of passing of MS-CIT examination by all the employees in service and time schedule was given for the same. The Petitioner could not complete MS-CIT within time limit but acquired the said qualification in 2021. Though initially Government had provided the consequence of recovery of the payment and reversion in case of promotion for not completing MS-CIT course but the said Resolution came to be stayed on 27th November, 2022. According to the Petitioner by the order dated 14th February, 2022 recovery is sought to be made from the retiral benefits of the Petitioner on the basis of order dated 11th May, 2021 of of Chief Audit Officer of Respondent-Corporation.

3. Respondent Nos.2 and 3 opposed the Petition by filing affidavit-in-reply of Mr. Ankush A. Pandhare, Dy. Commissioner, Municipal Corporation, Aurangabad. Though there is no dispute made with regard to the tenure of service of the Petitioner, it is claimed that in the year 2018 i.e. on 3rd July, 2018 the Government Resolution came to be issued directing the authorities to take care to consider provisions of Maharashtra Civil Services (Knowledge of Computer Handling/Use) (Amendment) Rules, 2018, in case of non submission of certificates

related to computer knowledge an action of withholding the promotion and pay scale was sought therein. Thereafter by Government Resolution dated 26th November, 2020 has clarified that the extension till 31st December, 2007 should be considered as the final extension for employees in Group-A, Group-B and Group-C. It is claimed that the Petitioner had issued consent letter 19th April, 2022 permitting the Corporation to deduct Rs.2,36,974/- for not furnishing MS-CIT certificate till April, 2014.

4. We have extensively heard rival contentions of learned Advocates for both the sides and perused pleadings and documents placed on record.

5. There is no dispute about the fact that the Petitioner was in the employment of Respondent-Corporation and had superannuated on 30th April, 2022. Undeniably, Petitioner did not acquire MS-CIT certificate till April, 2014, however, the same has been acquired subsequently in 2021. Now question arises before us is as to whether the Respondents can be permitted to recover the amount for non furnishing of the MS-CIT certificate till April, 2014, at the fag end of her service.

6. In order to decide the controversy involved herein it would be fruitful to refer to the judgment of the Hon'ble Supreme Court in ***Syed Abdul Qadir and Others Versus State of Bihar and Others, (2009)3 SCC 475,*** has held in paragraph Nos.57, 58, 59 read 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. Government 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 appellants teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants teachers should be made."*

7. Similarly in ***State of Punjab and others etc. V. Rafiq Masih (White Washer) etc., AIR 2015 SC 696,*** it is observed that excess unauthorized payment made to the employee, not to be recovered from the retired employee or employee about to retire, as making of recovery would entail extreme hardship on the retired employee. In ***High Court of Punjab and Haryana And other Versus Jagdev Singh, (2016) 14 SCC 267,*** while deciding the issue with regard to the permissibility of the recovery of excess amount paid post retirement, it is observed thus:

> *"10 In State of Punjab v. Rafiq Masih this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law: (SCC pp.334-35)*
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> > *(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."*
> *(emphasis supplied).*

8. Reverting back to the facts of the present case, Respondents have not come out with the case that the Petitioner misrepresented or played fraud upon them in order to get any service benefits. It is the Respondents who did not take action against the Petitioner for the recovery of the amount in spite of there being Government Resolution in the year 2018 dated 3rd July, 2018 as well as the Government Resolution dated 26th November, 2020. No undertaking was obtained from the Petitioner during this period, however, on 19th April, 2022 i.e. the month in which the Petitioner was due for superannuation, an undertaking is obtained from her practically she authorizing the Respondents to carry out deductions from her retiral benefits for not obtainment of MS-CIT certificate. The Hon'ble Supreme Court in ***High Court of Punjab and Haryana And other Versus Jagdev Singh*** (supra), has held that the recovery from the retired employees or employees who are due to retire within one year of the order of the recovery is not tenable. So also the recovery for the period in excess of five years is not permissible. As far as the undertaking given by the Petitioner is concerned, since she was due for retirement and in all probability she could have been refused retiral benefit for non furnishing of undertaking and hence such undertaking cannot be treated as voluntary, having regard to the situation / circumstances in which it was given. We therefore are of

considered view that no recovery can be initiated on basis of such undertaking.

9. Having considered the law settled by the Hon'ble Supreme Court with regard to the recovery of any dues from the retiral benefits of the employee, and having regard to the facts and circumstances of the case we hold that the Respondents have no right to carry out any recovery from the retiral benefits of the Petitioner.

10. **This Writ Petition stands allowed.** The order dated 7th April, 2022 is not sustainable and is set aside.

11. We are informed that pursuant to the impugned order, recovery has been effected to the extent of Rs.2,36,974/-. The Respondents, therefore, is directed to refund Rs.2,36,974/- to the Petitioner within a period of 30 days from the date of this order. In failure thereof, the said amount shall carry interest at the rate of 9% per annum.

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

ssp