



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 598 OF 2019

Namdeo s/o Yamaji Kite .. Petitioner

versus

State of Maharashtra & others .. Respondents

Mr. G. L. Deshpande, Advocate for the Petitioner.

Ms. N. B. Kamble, AGP for the State.

Mr. A. B. Kadethankar, Advocate for Respondent No. 2.

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

DATE : 20th MARCH, 2024.

PER COURT : (Per R. M. Joshi, J.)

1. The Petitioner takes exception to the pay verification, re-fixation and consequent recovery of Rs. 27,135/- sought to be done by Respondent No. 2.

2. The Petitioner joined the services of the State Judicial Department as English Section Writer on 12th February, 1973. He was thereafter posted as Junior Clerk with Civil Judge, Junior Division, Aurangabad and then was promoted to the post of Assistant Superintendent, District Court, Jalna. Lastly, he was holding the

post of Registrar, District Court, Jalna and got retired after attaining the age of superannuation on 31st December, 2010. After retirement, the pay of the Petitioner was revised with fixation of pay by giving benefit of Justice Shetty Commission and by the Government Resolution dated 20th October, 2018 with retrospective effect from 1st April, 2003. He was also paid arrears. Subsequently, re-fixation was done and the Petitioner, by office order bearing No. 5/2017 dated 6th May, 2017, was called upon to deposit amount of Rs. 27,135/- towards the excess payment made to him.

3. On behalf of Respondent No. 4, an affidavit-in-reply was filed by Santosh Khadatkhar. Whereas, Registrar (Legal and Research), filed affidavit for and on behalf of the High Court of Bombay, opposing the petition.

4. We have extensively heard the learned Advocates for the Petitioner and Respondents.

5. One of the contentions of the Petitioner is that he is covered by the judgment of Hon'ble Apex Court in case of High Court of Punjab & Haryana and others vs. Jagdev Singh, **2016(14) SCC**

267 and State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334. It is also claimed that the Petitioner was not heard at the time of re-fixation.

6. The learned Advocate for Respondent No. 2 opposed the said submission by contending that the judgments cited supra are not applicable to the present case as re-fixation has been done in the year 2013 and at the relevant time, his undertaking was obtained.

7. Before appreciating the applicability of the judgments cited supra to the present case, it would be relevant to take note of the certain material facts. The Petitioner was appointed in the Judicial Department on 12th February, 1973. He worked on different posts and finally occupied the post of Registrar with District Court, Jalna. On attaining the age of superannuation, he retired from services on 31st December, 2010. There is no dispute about the fact that after retirement of the Petitioner, the pay fixation was done on the basis of Justice Shetty Commission report. He did not object to the same. At that time, an undertaking was obtained from the Petitioner that in case of any excess payment made to him, the same shall be returned. The Hon'ble Supreme Court in case of Jagdev

Singh (supra) as well as Rafiq Masih (supra) has held that in following situations, recovery by the employer 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.”*

8. In judgments cited supra situation contemplates that either the refixation is done at the time of fag end of service or after retirement, in respect of pay already fixed. Whereas, in the instant case, the pay fixation has been done after retirement of the Petitioner

due to implementation of recommendation of Pay Commission. Pertinently, he does not object to pay fixation. As such, no situation has arisen to the employer to obtain any undertaking from the Petitioner at any point of time prior to such pay fixation. There is no dispute about the fact that after the Petitioner was retired, pay fixation was done and at the relevant time, an undertaking was obtained from him. In our respectful view, this situation is not covered by the judgments of the Hon'ble Supreme Court cited supra. Since, the undertaking for repayment of excess amount is given by the Petitioner at the time of pay fixation, he won't be able to get benefit of these judgments.

9. The record however, indicates that at the time of re-fixation, the Petitioner was not heard. Any order passed adverse to the interest of the Petitioner without affording him an opportunity of hearing cannot sustain.

10. This Writ Petition is partly allowed. The impugned order dated 6th May, 2017, is set aside. We clarify that it would be open for Respondent No. 2 to re-fix the pay scale of the Petitioner after giving him an opportunity of hearing. In case, the pay fixation is adverse to

the interest of the Petitioner and any amount becomes recoverable from the Petitioner, such order shall not be implemented for the period of 30 days to enable the Petitioner to take appropriate steps in this regard.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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