IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 521 OF 2019

Shri. R. Muthuswamy ...Petitioner
Versus
The State Of Maharashtra And Ors. ...Respondents

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Mr. Nitin Kulkarni a/w Mr. Avinash Belge for the Petitioner.
Ms. Nisha Mehra, AGP for the Respondent Nos. 1 to 3/State.
Mr.Chetan Patil, Assistant Section Officer, Revenue Department present.
Mr. Santosh Dete, Avval Karkun, Collector Office, Mumbai City present.

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CORAM : NITIN JAMDAR AND M.M. SATHAYE, JJ.

DATE : 30 APRIL 2024

ORAL JUDGMENT (PER: NITIN JAMDAR,J.)

. Rule. Rule returnable forthwith. The learned AGP for the Respondent/State waives service. Taken up for final disposal.

2. The Petitioner was employed with Bhor Industries at Pune. His services were terminated by Bhor Industries on 10 April 1996 He raised the dispute which was referred to the Labour Court at Delhi. The Labour Court passed an award on 22 December 2012 directing Bhor Industries to pay retiral benefits to the Petitioner

declaring that the termination of the Petitioner was illegal. Bhor Industries was also directed to pay costs of Rs. 50,000/- to the Petitioner. Since the amount was not paid by Bhor Industries as per the award, the Petitioner filed an application under Section 33-C (1) of the Industrial Disputes Act, 1947 ('the Act of 1947' for short) before the Deputy Labour Commissioner and sought issuance of certificate to recover the amount of Rs.14,37,241/- as arrears of land revenue. The certificate thereafter was put into execution by Respondent No.2/the Collector Mumbai and Respondent No.3/the Tahsildar an amount of Rs.14,37,241/- was recovered from Bhor Industries and the Petitioner was paid an amount of Rs.12,93,517/-. The Petitioner made inquiry as to why remaining 10% of the amount has not been paid to the Petitioner. The Petitioner was informed on 1 January 2018 that 10% of the amount was deducted by Respondent Nos. 2 and 3 in view of Government Resolution dated 5 October 1995. Also reference was made to the Government Circular dated 22 June 1999.

3. Challenging this action of the Respondent, the Petitioner has filed this petition seeking a direction that the amount of Rs.1,43,724/- has been wrongly deducted and sought refund thereof along with interest. The petition was filed in April 2018. The reply affidavit is filed by the Tahsildar, Mumbai on 1 August 2019 opposing the petition.

4. We have heard Mr. Kulkarni, the learned counsel for the

Petitioner and the learned AGP for the Respondent/State.

5. The learned counsel for the Petitioner firstly submitted that the Government Resolution/notification dated 5 October 1995 and 22 June 1999 do not apply to the fact situation. He submitted that neither under this notification nor under the Provision of Maharashtra Land Revenue Code, that 10% of the amount under the certificate issued under Section 33-C (1) of the Act of 1947 can be recovered from the beneficiary of the certificate and if at all any amount is to be recovered for the Administrative expenses, it should be from the party against whom such certificate is issued.

6. In the reply affidavit, the Tahsildar has stated that 10% amount was deducted as per the Government Resolutions dated 5 October 1995 and 22 June 1999 that is if the recoveries is to be made from other State, Central Government and Government undertaking and this fact has been communicated to the Petitioner accordingly. The stand is taken that both the Government Resolutions have been rightly applied to the case of the Petitioner. After the matter was heard briefly on 23 April 2024, it was kept today for further arguments. Today, the learned AGP states that the Deputy Secretary of the State of Maharashtra has given instructions that the amount would be refunded as it has been wrongly deducted.

7. The Petitioner was working on a clerical post. He was terminated from services on 10 April 1996. His employer's stand

that he is not a workman was found to be frivolous and the Petitioner was held entitled to wages by an award dated 22 December 2022, when the reference was made in the year 1997. So it is from the year 1997, the Petitioner is pursuing his claim for back wages. The Petitioner had to take a certificate and execute the same for furtherance of his claim for back wages and it is in July 2016 that the Petitioner received the amount and from this amount, deduction is made.

8. In the background of the hardship faced by the Petitioner, as above who is one out of many such workmen, who have to apply to the authorities for certificate under Section 33-C (1) for recovery of the rightful wages, we need to examine this case carefully.

9. The circular dated 5 October 1995 has a scheme to promote recovery of amounts due to public bodies, Corporation, Co-operative Societies, Zilla Parishad and Government department under Section 221 of the Maharashtra Land Revenue Code. It is stated therein that first the statutory authorities and public bodies make all possible efforts and after they are exhausted they asked for recovery through arrears of land revenue and it is difficult to recover the amount and put stress on the machinery of the State to recover the amount and therefore, it was decided that 10% of amount recovered from this public bodies should be deducted by the State. The circular/Government Resolution dated 22 June 1999 is only a modification of the Government Resolution dated 5 October 1995,

wherein it is stated that in respect of recovery for the public bodies and the Corporation in the State of Maharashtra, 10% of the amount should not be deducted. Therefore, this was the only change brought in by the Government Resolution dated 22 June 1999 to the Government Resolution dated 5 October 1995 which pertain only as stated earlier to public bodies, Zilla Parishad etc. There is no reference whatsoever in the circular to recovery for a workman under Section 33-C (1) of the Industrial Disputes Act.

10. Section 33-C (1) of the Industrial Disputes Act, 1947 reads thus:

> *"33-C. Recovery of money due from an employer-(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB] the workman himself or any other person authorised by him in writing in his behalf, or , in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and <u>if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.</u>*
>
> *Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer.*
>
> *Provided further that any such application may be entertained after the expiry of the said period of one year, if he appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period."*
>
> *(emphasis supplied)*

11. Section 33-C(1) casts a statutory duty on the part of the Authority to recover the amount stated in the Certificate. Therefore, the logic employed in the Government Resolution dated 5 October 1995, which is applicable to the Public Bodies such as Zilla Parishad, Co-operative Societies, cannot and does not apply to the certificate issued under Section 33-C (1). It is for this reason that the Government Resolutions dated 5 October 1995 and 22 June 1999 have not mentioned the recovery under the Certificate.

12. If it was an inadvertent mistake on the part of the Authorities, then, when the Petitioner brought to their notice that the amount has been wrongfully deducted, corrective measures could have been immediately taken. However, not only the Petitioner was informed by the Collector/Respondent No.2 on 1 October 2018 that the amount has been rightly deducted under these Government Resolutions but even the explanation was given to the State Government by the Tahsildar based on this Government Resolutions. To make the matter worse, the reply affidavit is filed by the Tahsildar justifying the recovery based on the Government Resolutions.

13. The Collector/ Tahsildars who filed the affidavit and took the stand that amount was rightly deducted under the Resolution are different individuals yet complete non application of mind shown by all concerned. Considering the fact that the Petitioner was struggling for more than 25 years to get amount and his arrears, the issue

should have been handled sensitively. Yet erroneous stand has been strongly defended even in the reply since last five years. Only after that we have indicated in the last week that the approach is wrong that now instructions have been given to return the amount. According to us, mere return of the amount will not meet the ends of justice and suitable interest needs to be paid to the Petitioner.

14. Accordingly, we allow this Writ Petition and set aside the deduction and direct the Respondents to pay the amount of Rs.1,43,724/- with interest @ 9% p.a. from 20 July 2016 (when the amount was deducted) till its payment which shall be made within period of four weeks. After four weeks, the said amount will carry the interest @ 12% p.a. It is open to the State Government to fix responsibility of payment of this interest on the concerned Officer and take appropriate further action.

15. Rule is made absolute in aforesaid terms. The Writ Petition is disposed of.

(M.M. SATHAYE, J.) **(NITIN JAMDAR, J.)**