IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17056 OF 2024

Shashikala Walmik Kate ...Petitioner

Versus

Pune Municipal Corporation & Ors. ...Respondents

Mr. Sachin Salunke, Advocate for the Petitioner.

Ms. Manisha Jagtap a/w Ms. Swara Vichare, Advocate for Respondent No.1.

Mr. V.M. Mali, AGP for the Respondent – State.

CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.

DATE : 5th DECEMBER, 2024

SUNNY ANKUSHRAO THOTE
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Date: 2024.12.10 12:05:25 +0530

P.C. :-

1. The Petitioner is aggrieved by the Communications dated 7th August, 2023 and 14th November, 2022 issued by Respondent Nos.1 and 2, respectively, vide which, recovery and reduction of pay from her retiral benefits on account of passing MS-CIT examination late, has been ordered.

2. It is the case of the Petitioner that she was appointed as

Teacher (Primary) on 17th November, 1986 and since then till the completion of her tenure of service, she performed her duties continuously. On 31st July, 2022, she retired from service on attaining the age of superannuation. It is her case that during the course of service, the Government has adopted a policy that all the employees in service, should pass MS-CIT examination within a time schedule. The Petitioner could not complete MS-CIT within the time limit, but, acquired the said qualification in 2018.

3. Though initially, the Government had issued a GR providing the consequence of recovery of the excess payment made and reversion in case of promotion, for not completing MS-CIT course, the said Resolution came to be stayed on 27th November, 2020. According to the Petitioner, by the Communication dated 7th August, 2023, reduction of pay scale and recovery is made from her retiral benefits on the basis of an Objection of Respondent No.2, dated 14th November, 2022.

4. Respondent Nos.2 and 3 opposed the Petition, though there is no dispute made with regard to the tenure of service of the

Petitioner. It is claimed that on 3rd July, 2018 the Government Resolution came to be issued directing the authorities to take consider the provisions of Maharashtra Civil Services (Knowledge of Computer Handling/Use) (Amendment) Rules, 2018, in case of non submission of certificates related to computer knowledge, and resort to the action of withholding the promotion and pay scale was sought therein. Thereafter by Government Resolution dated 26th November, 2020 it has been 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.

5. It is claimed that the Petitioner had issued a *hamipatra* letter dated 25th September, 2019 permitting the Corporation to deduct the excess amount as per the Maharashtra Civil Services (Revised Pay) Rules, 2019 if it is noticed that overpayment has been made. However, the Government Resolution dated 26th November, 2020 was stayed by Government Resolution dated 27th November, 2020.

6. The learned AGP for the Respondents has fairly submitted that the case of the Petitioner is covered under settled

principles of law as well as Government Resolution dated 27th November, 2020, whereby recovery in such cases is stayed.

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

8. There is no dispute about the fact that the Petitioner was in the employment of Respondent-Corporation and had superannuated on 31st July, 2022. Undeniably, the Petitioner did not acquire MS-CIT certificate. However, the same has been acquired subsequently in 2018. Now the question that arises before us is as to whether the Respondents can be permitted to recover the amount for non furnishing of the MS-CIT certificate, at the fag end of her service.

9. 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,*** wherein it has been held in paragraph

Nos.57, 58, 59, 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.*
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> *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."*

10. Similarly in ***The 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, is not to be recovered from the retired employee or employee about to retire, as making of recovery would cause extreme hardships to 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 to the 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)*
>
> > *(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).*

11. Reverting back to the facts of the present case, the Respondents have not come with the case that the Petitioner misrepresented or played a 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 issued in the year 2018 dated 3rd July, 2018, as well as the Government Resolution dated 26th November, 2020. However, by Government Resolution dated 27th November, 2020, operation of Government Resolution dated 26th November, 2020, is stayed. No undertaking was obtained from the Petitioner during this period.

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

13. Having considered the law settled by the Hon’ble

Supreme Court with regard to 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.

14. **This Writ Petition stands allowed.** The impugned Communication dated 7th August, 2023 of Respondent No.1 and Objection dated 14th November, 2022 of Respondent No.2, are hereby set aside. We, therefore, hold that Petitioner is not liable for any recovery and reduction of pay scale.

15. Since recovery has been done in respect of alleged excess payment made to the Petitioner, she is denied retiral benefits by the Respondent-Corporation. We, therefore, hereby direct Respondents to pay the arrears of the pension to the Petitioner with interest, forthwith

(ASHWIN D. BHOBE, J.) **(RAVINDRA V. GHUGE, J.)**