2024:BHC-NAG:6648

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 3356 of 2019

Sudhakar Madhavrao Durge
Aged about 60 years,
Occupation : Retired
R/o : Shramik Nagar, Ward No. 8
Mul, Distt: Chandrapur. **.... Petitioner**

- VERSUS -

(1) The Deputy Conservator of Forest
Central Chanda Division
Mul Road, Chandrapur.

(2) The Range Forest Officer,
Forest Range, Ballarshaha,
Dist: Chandrapur.

(3) The Chief Conservator of Forest
Circle, Civil Lines, Nagpur. **.... Respondents**

Mr. S. S. Ghate, Advocate for the petitioner
Mr. S. B. Bissa, A.G.P. for the respondents

CORAM : ANIL L. PANSARE J.
DATED : 27-06-2024

ORAL JUDGMENT

The challenge is to the order dated 27-02-2019 passed by the learned Industrial Court, Chandrapur in Complaint (ULP) No. 30/2015. The Industrial Court has dismissed the complaint lodged by the petitioner against the recovery of Rs. 2,42,451/- ordered by respondent no. 1 – Deputy Conservator of Forest. It would be appropriate to note here some dates. The Deputy Conservator of Forest has passed order on 11-11-2013. The petitioner was due for retirement on 31-3-2014. The order of recovery of excess payment has been thus passed around four months prior to petitioner's superannuation. The petitioner was working as Forester, which admittedly is Class III post.

2. The order dated 11-11-2013 passed by the Deputy Conservator of Forest indicates that between the period 1-7-2009 till 1-7-2013, the respondent – employer has, by way of increment, released the payment in favour of the petitioner which the employer later on found to be a mistake committed while fixation of pay scale in terms of 6th Pay Commission. Accordingly, the excess payment to the tune of Rs. 2,42,451/- was ordered to be recovered forthwith and accordingly, the entire recovery has been made against the encashment of leave.

3. The question that requires answer is whether the Deputy Conservator of Forest could have passed such order considering the fact that the petitioner was Class III employee and was due for retirement in four months. The issue is no more *res integra.* The Hon'ble Supreme Court in the case of ***State of Punjab and ors. Vs. Rafiq Masih (white Washer) and ors. [(2015)4 SCC 334]*** has while considering the hardship that could be caused to the employees, particularly Class III and Class IV

employees, because of such recovery of excess payment, which may be made by the employer, because of mistake or any other factor proceeded to express the view in following terms.

> *"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."*

4. As could be seen, the recovery from the employees belonging to Class III and Class IV after their retirement is impermissible. The

recovery from the retired employees or employees, who are due to retire within one year is also impermissible. The petitioner fits in both the categories.

5. The Industrial Court, however, has ignored these vital facts and got swayed away by the undertaking given by the petitioner to refund excess payment which fact has been pressed by the learned Assistant Government Pleader as well.

6. Learned counsel for the petitioner, however, rightly countered these submissions by contending that this undertaking could not have been relied upon for two reasons, firstly, it pertains to excess payment in terms of pay fixation as per 6th Pay Commission. As against, the recovery of excess payment made was fixed as per 5th Pay Commission. Secondly, the undertaking given will be inconsequential considering the fact that the petitioner was Class III employee and was due to retire in four months.

7. The Industrial Court has failed to consider these vital aspects and, therefore, committed error of law, particularly when it is nobody's case that the mistake in calculations has been caused because of misrepresentation made by the petitioner.

8. The order impugned, therefore, is liable to be quashed and set aside and stands set aside accordingly. Consequently, the Complaint (ULP) No. 30/2015 is allowed. The respondent no. 1 shall pay amount of Rs. 2,42,451/- along with interest at the rate of 8% per annum from the date of recovery till its realization within period of 16 weeks.

9. Rule is made absolute in above terms.

(Anil L. Pansare, J.)

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