IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1103 OF 2024

Shri Hemraj Udhawrao Waghmare,
Age 74 yrs, Occ. Retired,
R/o. Juni Shukrawari, Malipura,
Nagpur …….**PETITIONER**

...V E R S U S...

1. The State of Maharashtra
Through it's Secretary
Animal Husbandry and Dairy
Department and Fisheries Department,
Mantralaya, Mumbai 400 032

2. Dr. Panjabrao Deshmukh Krishi Vidyapith
Akola, Through its Controller,
Tahsil and District Akola

3. The Associate Dean,
Agriculture College, Nagpur .....**RESPONDENTS**

Mr. T. Rahul, Advocate for the petitioner.
Mr. S.M. Ghodeswar, Assi. Government Pleader for respondent No. 1.
Mr. A.R. Patil, Advocate for respondent Nos. 2 and 3.

CORAM:- BHARATI DANGRE & ABHAY J. MANTRI, JJ.
DATE : 09.10.2024

JUDGMENT (Per : Abhay J. Mantri, J.)

1. **Rule.** Rule made returnable forthwith and heard finally, with the consent of the learned counsel for the parties.

2. A challenge is raised to the communication/order dated 08.01.2024 issued/passed by respondent No. 2—Controller, which directed the recovery of the excess amount of Rs. 6,88,728/-paid to the petitioner for a period from 31.05.1988 to 31.01.2010.

3. On 03.03.1976, the petitioner was appointed as an Agricultural Assistant and he retired as an Assistant Professor on 31.01.2010.

Respondent No. 3 passed an order fixing his salary @ Rs. 13780/- from the date of joining of the duties by the petitioner. Accordingly, respondent No. 2 fixed the pay of the petitioner vide order dated 06.11.2011.

Being dissatisfied with the pay fixation by respondent No.2, the petitioner, on 24.01.2011, made a representation to the authority to rectify the fixation of pay. Accordingly, his pay scale was revised by respondent No. 3 at Rs. 14,640/-, but the revised pension was not released to him.

On 26.02.2013 and 23.05.2019, the petitioner submitted representations to the respondents to release his revised pension, but it was not released till the filing of this petition.

4. On 26.04.2023, for the first time, the petitioner received communication from respondent No. 3 for recovery of the excess amount of Rs. 6,88,728/- paid to him for a period from 31.5.1988 to 31.01.2010. Pursuant to the said communication, he approached the respondents and made a representation that the Government Resolution dated 30.06.2010 does not apply to him since the said G.R. does not mention anything about retired employees. Besides, pension was granted to him on 06.01.2011, i.e. after the issuance of the Government Resolution.

5. Mr. T. Rahul, the learned Counsel for the petitioner, vehemently contended that the petitioner was superannuated on 31.01.2010 and after a passage of 14 years, the respondents have issued the impugned order of recovery of an amount and, therefore, on that count itself, the respondents are not entitled to recover the amount.

He has drawn our attention to the decision of the Hon'ble Apex Court in the case of ***State of Punjab and Others vs. Rafique Masih (2014)8 SCC 883*** (***Rafiq Masih***) and submitted that the present case is squarely covered by the said decision. As such, he has prayed for allowing the petition.

6. On the contrary, the learned Counsel, Mr. A.R. Patil, for the respondent Nos. 2 and 3, submitted that the petitioner has suppressed the material facts from the Court that the petitioner had given an undertaking to respondent No. 2 at the time of retirement and fixation of his pension that 'he undertook to refund the excess payment if it was so detected and demanded subsequently, to be made to him as a result of incorrect pay fixation'. So, he submitted that the respondents are entitled to recover the excess payment made to him in terms of the undertaking. He further canvassed that the petitioner was an Assistant Professor, and therefore, the ratio laid down in the case of ***Rafiq Masih*** (supra) does not apply to the case at hand. He has invited our attention to the undertaking dated 08.04.2010 and a representation dated 08.01.2021 made by the petitioner.

7. We have considered the rival submissions of the parties and perused the record. The two questions that arise are "whether the respondents are entitled to recover the excess amount mistakenly paid by the employer to the petitioner after a passage of 14 years?" and, secondly, whether upon undertaking being furnished by the petitioner, authorise the employer to recover the

amount.

8. While dealing with the aforesaid issues, we would like to refer to the principles enunciated in the case of ***Rafiq Masih*** (*supra*), wherein the Apex Court held that, ***in the following situations, recovery by the employer would be impermissible in law***, which read thus, :-

> *" (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 <u>in excess of five years</u> 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*)

In addition to the above, the Hon'ble Apex Court has held as below;

> *"It is not possible to postulate all situations of hardship, that 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, the recovery from the employee or employees to class-III, who are due for retirement or due for retirement within one year, in that case, the recovery of the amount by the employers from the said employee is impermissib*le."

9. Undisputably, in the present case, the petitioner retired on 31.01.2010, and after the lapse of 14 years, the respondent authority has issued notice for recovery of the amount. The respondent authority committed the mistake while fixing the petitioner's pay. In such an eventuality, in our view, the principle enunciated in proposition No. (iii), in the case of ***Rafiq Masih***(supra), is squarely applicable as the said recovery notice has been issued after a lapse of period of 5 years from the date of his retirement.

10. Apart from the above, the Hon'ble Apex Court has dealt with the concept of "justice, equity and good conscience" and, invoking the principle of equity, ruled that the benefits which were extended to the employee, like the petitioner, for a considerable period of more than a decade cannot be abruptly withdrawn, just because, after 14 years, the employer has realized their mistake of granting excess payment. Even it is not the case of the respondents that the petitioner gained such benefits by making misrepresentation or fraud.

It is a settled principle of law that, based on the principle of equity, a person cannot be penalised for no fault on his part.

11. Second objection raised by the respondents about the furnishing of undertaking by the petitioner while opting for the revised pay scale. It is not uncommon for the employer, at the time of fixation of the revised pay scale or the pension case, to obtain an undertaking from each employee, but the question is whether, this itself would empower the employer to recover the amount at the behest of State.

In this case, the petitioner retired on 31.01.2010 and on 08.04.2010, the respondents obtained an undertaking from the petitioner, and thereafter by order dated 06.11.2011, the pension was sanctioned. Then, after 14 years of the petitioner's retirement, the employer, based on this cyclostyle undertaking, taken in the usual course/manner, issued the impugned order of recovery of the amount.

On perusal of the impugned communication/ order, it appears that on 26.04.2023, respondent authority detected incorrect pay fixation of the petitioner, by the employer and definitely the petitioner was not at all fault, therefore, as per condition No. (iii) enumerated in the case of ***Rafiq Masih***(supra), respondents cannot recover the excess amount, if any, paid to the petitioner.

12. From the situation emerging above, it would be evident that this is a fit case wherein it can be said that if the respondent-employer is authorised to recover the excess amount paid to the petitioner, who has retired from the service a decade ago, it would be more wrongful, improper and amount to a high handed act. On the contrary, as per condition No. (iii) enumerated in the case of ***Rafiq Masih***(supra) is squarely applicable to the case at hand. Admittedly, there is no allegation of any fraud or misrepresentation at the behest of the petitioner. Therefore, we deem it appropriate to direct the respondent to refund the amount that was recovered from the arrears of the petitioner to him, as the petitioner is in no way responsible for the excess payment of the amount or that he has enriched himself, by any fraudulent act.

13. In the wake of the above and the dictum laid down in the case of ***Rafiq Masih*** (supra), we are of the view that issuance of the impugned communication/order directing recovery is contrary to the same.

In the backdrop of the above, the petition is allowed in the following terms:

(i) The impugned order dated 08.01.2024 (Exhibit No. p-7), issued by respondent No. 2, is hereby quashed and set aside.

(ii) As a sequel, the respondents are directed to release the pension of the petitioner as per the revised order passed by respondent No. 3 – The Associate Dean, Agriculture College, Nagpur, within period of eight weeks from the date of receipt of the order.

(ABHAY J. MANTRI, J.) **(BHARATI DANGRE, J.)**

R. Belkhede,
Personal Assistant

Signed by: Mr. R. S. Belkhede
Designation: PA To Honourable Judge
Date: 24/10/2024 18:04:48