Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 542 OF 2023

Mr. Pradeep B. Verekar
Aged 63, Retired Dy. Conservator of Forest, Resident of House No. 154/23,
Nr. Kamat Nursing Home, Ponda-Goa ... Petitioner.

Versus

1. State of Goa, Through Chief Secretary, Secretariat, Porvorim, Bardez, Goa.

2. Forest Department, through Under Secretary (Forest) Secretariat, Provorim Goa. .... Respondents.

Mr Terence Sequeira, Advocate for the petitioner.

Mr Neehal Vernekar, Addl. Govt. Advocate for respondents.

CORAM: BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.

Date: 9th April 2025.

ORAL JUDGMENT(*Per BHARATI DANGRE, J***)**

1. By consent of the respective counsel we issue Rule. Rule is made returnable forthwith. Petition is taken up for final hearing with the consent of the parties.

2. Heard learned counsel for the respective parties.

The petitioner, a Range Forest Officer in the Forest Department, was promoted to the post of Deputy Conservator of Forest on 10.02.2020 and on 30.06.2020 he retired on attaining age of superannuation.

3. Despite this, since the Department failed to release his pension and other benefits, he addressed a communication to the Deputy Director (Administration) Forest Department on 22.11.2022 making a grievance that the benefits due to him are not yet released in his favour.

Petitioner on inquiry gained knowledge that his pension case was purportedly kept pending in the wake of some excess payment being made to him some 15 to 20 years before. He was made to run pillar to post for getting his pensionary benefits released and he made repeated requests for processing his pension papers.

When he sought information under the Right to Information Act, 2005, it was disclosed to him on 22.02.2023 that the Under Secretary (Forest) had conveyed to the Deputy Director (Administration) that the Government has approved recovery of some amount from him. On the very same date by another order, provisional pension under Section 64 of Central Civil Service (Pension) Rules 1972 was sanctioned in his favour.

4. Being aggrieved by the communication dated 22.02.2023, granting approval for recovery of aforesaid amount from the petitioner, arising out of grant of financial upgradation under ACPS-II and MACPS-III while on extraordinary leave, the petitioner approached this Court seeking quashing of this communication.

5. When petition was listed before this Court on 28.8.2023, the Court indicated to the Government Counsel to appraise it about the status of payment of pension and other retiral benefits which remained unpaid to him despite his retirement in June 2020. As far as recovery of the amount from his pensionary benefits, it was stayed and the order continues till date.

Pursuant to the order passed by this Court, the pensionary benefits were credited to the account of the petitioner on 23.10.2023 including gratuity.

6. Though the recovery of the amount which received approval from the higher up in the Forest Department is stayed, we are called upon to decide whether such an recovery can be ordered against petitioner and the petitioner also claim interest for the delayed payment on pension and gratuity, which was received by him after a period of more than 3 years and to be precise 3 years and four months.

7. It is trite position in law that recovery of any amount on the pretext that it was paid in excess, shall not be allowed unless it is established that there was any misrepresentation or fraud on the part of the employee. Right from the decision of the Apex Court in the case of *Shyam Babu Verma Vs Union of India*,[1] till the most celebrated

1 (1994)2 SCC 521

decision in the case of *State of Punjab Vs Rafiq Masih (white washer's case*)[2], the law is well expounded to the effect that since the recoveries on the pretext of the amount being paid in excess of the entitlement without any fault or misrepresentation at the behest of the recipient, cause hardship to an employee, it is categorically held that the right to recover being pursued by the employer will have to be compared with the effect of the recovery on the employee concerned and effect of the recovery on the employee would be more unfair, more wrongful, more improper, and more unwarranted, then the corresponding right of the employer to recover the amount would be arbitrary.

8. Recently this principle once again reiterated in J*ogeswar Sahoo and ors. Vs the District Judge, Cuttack and others,*[3] when their Lordships of the Apex Court, applied the said principle to the case of the appellants working on the post of stenographer, when the alleged illegal payment was made recorded that such payment was made to the appellants on account of any fraud or misrepresentation by them, but when the financial benefit was extended to the appellants, the same was subsequently not approved by the High Court and it resulted in order of recovery, it was conclusively held that the appellants had superannuated on the post of stenographer and therefore applying the law as laid down in the past, since they were not holding any gazetted post, amount was held cannot be recovered from them.

2 (2015) 4 SCC 334.

3 SLP(Civil) No(s). 5918/2024

9. Admittedly it is not the case of the respondents that the amount was paid to the petitioner on account of any fraud or misrepresentation attributed to him.

The noting of the Forest Department dated 14.7.2021 which had processed the pension papers of the petitioner are perused by us which is placed at Exh.K and which records that the petitioner was on extraordinary leave w.e.f. 01.02.2002 to 19.03.2006 (4 years, 1 month and 19 days) and Directorate of Accounts, Panaji had raised an objection and asked to postpone the financial upgradation since extra ordinary leave cannot be considered for grant of financial upgradation. Noting also record that the officer has retired as Deputy Conservator of Forests(State Forest Service) w.e.f. 30.06.2020 and pension case are not settled on account of non regularisaion of extraordinary leave.

Noting also record that the Department proposed that petitioner will be given the benefit of exemption on recovery of excess payment under point 4(ii) of the Office Memorandum dated 02.03.2016, recovery from retired employees or employees who are due to retire within one year, of the order of recovery.

10. In any case, the petitioner retired in the year 2020 and what was sought to be regulated is the period between 2002 to 2006 and it is this amount which is paid to him is sought to be recovered. Ultimately the aforesaid period in the service of the petitioner was regularised and treated as a part of the service and therefore there is no question of any recovery of the amount against him.

Noting also revealed that the petitioner was granted ACPS-II w.e.f. 01.01.2008 in the year 2012 and MACPS-III w.e.f. 17.09.2014, but after verification this lacuna was found.

11. In any case, this can be no justification for delaying the relief of pensionary benefits as this event in the service of the petitioner had occurred long back ago and when he retired on 30.6.2020, preceding his retirement pensionary benefits ought to have been processed and if at all any lacuna existed, that ought to have been cleared.

For the delay in payment of retirement benefits, petitioner is not to be blamed as it was always open for the department to take a decision as permissible in law at the relevant time.

12. Since we find that recovery of the petitioner under the impugned communication cannot be sustained in the wake of well settled position and particularly when now he is superannuated and we do not find any justification for delay in release of pensionary benefit due to him.

13. Writ Petition stands allowed by quashing and setting aside the impugned communication; withholding payment of pension and gratuity amount to the petitioner. The amount due to the petitioner shall be credited in the account of petitioner with interest at the rate of 6% from the date on which amount was due and payable till the amount it is actually paid. The amount is directed to be disbursed within a period of eight weeks.

14. With the aforesaid directions, Rule is made absolute.

NIVEDITA P. MEHTA, J. **BHARATI DANGRE, J.**