(2021) 09 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No.13262 Of 2018

Ananda	APPELLANT
Vs	
Shakuntala And Others	RESPONDENT

Date of Decision : 01-09-2021

Acts Referred:

Citation : (2021) 09 BOM CK 0017

Hon'ble Judges : Ravindra V. Ghuge, J;S.G. Mehare, J

Bench : Division Bench

Advocate : Paresh B. Patil, S.B. Pulkundwar, S.R. Dheple

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J

1. Rule. Rule made returnable forthwith and heard fnally by consent of the parties.

2. The petitioner has put-forth prayer clauses (B) and (C) as under:

"B. By Writ of Certiorari or by appropriate like nature or by appropriate orders and directions, the impugned order dated 04/06/2018 passed by the Resp. No.3 against the petitioner in regards to Recovery of excess amount may kindly be quashed and set-aside.

C. By issuance of appropriate Writ like nature or by appropriate orders and directions, the Resp. No.2 to 5 kindly be directed to refund excess recovered amount, with 8% interest to the petitioner and for that purpose this Hon'ble High Court may kindly be passed necessary orders, for that purpose this Hon'ble Court may pass appropriate orders."

3. The petitioner has retired as a graded headmaster on 31.05.2018. He joined on 14.03.1984. He was a benefciary of the 5th pay commission recommendations given efect to from 01.01.1996.

Admittedly, while calculating his pay scale, there was a slight mistake and as a consequence of which, the petitioner earned excess amount during the period of the applicability of the 5th pay commission recommendations.

Within 4 days of his superannuation, the employer calculated his entire legal dues and the excess amount was calculated. An amount of Rs.01,95,048/- was quantifed as being excess pay earned by the petitioner. Rs.23,738/- was towards the increment which he was paid under the belief that he has passed his MS-CIT computer examination.

The petitioner submits that he would not claim refund of this amount. He however, has preferred this petition for seeking repayment of Rs.01,95,048/- which the employer has deducted from his retiral benefits while calculating them and he has been paid the residual amounts. He has also been receiving the pension ever since his retirement.

4. The learned advocate representing respondent nos.1 to 4 - employer points out that a specifc undertaking was taken from the petitioner on 15.05.2018, vide which he agreed for repayment or recovery of such amounts which may have been inadvertently paid in excess to him. He has also executed another undertaking to repay the amount or agree for a recovery, if it is noticed at the time of his retirement that he has drawn excess pay. Though there is no date on the printed form, we fnd '2019' as a part of the printed form which indicates that this form at page no.42 may have been prepared in 2019. As such, though we may ignore this undated undertaking, we would not ignore the undertaking signed by the petitioner on 15.05.2018 in which he has added a sentence in handwriting as 'es U;k;kYk;kps fudkykps vf/ku jkgwu ----'. This sentence is written before he had approached this Court and it also indicates that he was aware that he must have received excess amounts and hence had the intention of challenging such recovery. Nevertheless, this undertaking is issued prior to his superannuation and the recovery has been caused within 4 days from the date of his superannuation.

5. The employer has entered an afdavit in reply dated 10.08.2020. It is reiterated that the undertaking was taken from the petitioner so as to ensure that any wrong payment made to him in excess of what he was entitled to, should not be permitted to be taken from the State Exchequer. Reliance is placed on the judgment delivered by the Hon'ble Apex Court in High Court of Punjab and Haryana and Others Vs. Jagdev Singh, 2016 AIR (SCW) 3523, in which the Hon'ble Apex Court has observed in paragraph no.11 as under:

"11. the principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the ofcer to whom the payment was made in the frst instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The ofcer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

6. The learned advocate for the petitioner has strenuously contended that the petitioner was a graded headmaster when he retired from service. He has not played any fraud on the management. Though within 4 days, the excess amount has been recovered from him, it was only after he superannuated. He submits that the judgment delivered by the Hon'ble Apex Court in Jagdev Singh (Supra) would not be applicable to him and the judgment delivered in the matter of State of Punjab and others Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334, would be applicable to him.

7. Our Courts are dealing with hundreds of such cases. On each day, we have atleast one such case before us. Considering the law laid down in Rafiq Masih (Supra), our Courts have been quashing notices for recovery on the ground that such notices have been issued long after the retirement of an employee and especially in the cases of Class-IV employees, who would fnd it difcult to shell out large sums of money towards recovery/payment. Consequentially, we have pardoned several Class-IV employees and protected them as against recovery.

8. We are conscious of the fact that the Hon'ble Apex Court has delivered a judgment in Jagdev Singh (Supra) after noticing that an undertaking was issued by an ofcer vide which, he had agreed to refund/ repay the excess amount.

9. This Court at the Nagpur Bench has dealt with Writ Petition No.4919 of 2018 fled by the State of Maharashtra and Others Vs. Sureshchandra S/o. Dharamchand Jain and Others for challenging the judgment of the learned Maharashtra Administrative Tribunal, Nagpur Bench dated 18.04.2017. In the said matter, the learned Tribunal had relied on Rafiq Masih (Supra) and had granted the relief to the appellant who was a Class-III employee. The learned Division Bench has observed in paragraph nos.4 to 7 as under:

4. The argument submitted in defence is fallacious. An undertaking has the efect of solemnity in law and if argument is to be accepted which has been submitted on behalf of the respondents, the majesty of law would be lowered and there would be a travesty of justice. Besides, the undertaking is about wrong pay fxation and consequent excess payment. The undertaking is not about grant of higher pay on the basis of right pay fxation. Had it been an undertaking as regards the later dimension of the case, one could have perhaps said that the undertaking was only a formality. When the undertaking takes into account the contingency of the wrongful pay fxation, the undertaking has to be said to have been given intentionally and with a view to be acted upon, in case the contingency did really arrive.

5. So, what we have before us is an undertaking given consciously and intentionally by the respondents and the respondents would have to be held bound by this undertaking. That means in the present case, no equity whatsoever has been created in favour of the respondents while making the excess payment and as such there is no question of any hardship visiting the respondents.

6. The reason weighing with the Hon'ble Apex Court imposing prohibition against recovery of excess payment in Rafiq Masih (supra) was of hardship resulting from creation of awkward situation because of the mistake committed by the employer and there being no fault whatsoever on the part of the employee. In order to balance the equities created in such a situation, the Hon'ble Apex Court in Rafiq Masih, gave the direction that so far as Class-III and IV employees were concerned, and who were found to be not having very sound economic footing, would have to be exempted from the consequence of recovery of the excess payment, if considerable period of time has passed by in between. But, as stated earlier, even in case of such an employee, there would be no hardship for something which has been accepted by him consciously with an understanding that it could be taken away at any point of time, if mistake is detected. Clarifying the law on the subject, the Hon'ble Apex Court, in its recent judgment rendered in the case of High Court of Punjab and Haryana and others vs. Jagdev Singh reported in 2016 AIR (SCW) 3523, in paragraph 11 it observed thus :

"the principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the ofcer to whom the payment was made in the frst instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The ofcer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

7. The fact situation of the present case is squarely covered by the above referred observations. These are the crucial aspects of the present case and the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur appears to have missed out on them and the result is of passing of an order which cannot be sustained in the eye of law."

10. We have a similar case in hand. The petitioner has specifcally given an undertaking prior to his retirement that if he has received any amount in excess to what he was legitimately entitled to, the said amount would be repaid or can be recovered. Such undertaking, if ignored, would be reduced to the value of a waste paper. An undertaking has it's own meaning and efect. If an undertaking is not to bind a person issuing it, there would be no sanctity to an undertaking. We cannot accept such an argument canvassed by an employee that an undertaking is a mere formality and should be ignored, lest, we ourselves would be party to neutralising the value of an undertaking.

11. In view of the above, we fnd that this petition is devoid of merits. The same is therefore dismissed. Rule is discharged.