

(2016) 07 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No.2648 of 2016

Lata Gajanan Wankhede

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 ALLMR 177 : (2016) 3 CLR 356 : (2017) 152 FLR 15 :
(2016) 6 MhLJ 658

Hon'ble Judges : Smt. Vasanti A. Naik and Mrs. Swapna Joshi, JJ.

Bench : Division Bench

Advocate : Shri A.S. Dhore, Counsel, for the Petitioner; Shri J.Y. Ghurde, AGP, for the Respondent No. 1; Shri Kiran Malokar, Counsel, for the Respondent Nos. 2 to 4

Final Decision : Disposed Off

Judgement

Mrs. Swapna Joshi, J.(Oral)—Rule. Rule is made returnable forthwith. The petition is heard finally at the stage of admission with the consent of the learned counsel for the parties.

2. By this writ petition, the petitioner has sought a declaration that the action on the part of the respondents in recovering the excess amount that was mistakenly paid to the petitioner while in service, after her retirement, is grossly illegal and is liable to be set aside.

3. The learned counsel for the petitioner vehemently argued that the respondents are not justified in seeking the recovery of the amount of Rs.3,04,475/which was wrongfully paid to the petitioner while in service, after the petitioner is voluntarily retired from the service. The learned counsel placed reliance upon the judgment reported in AIR 2015 SC 696 in the case of State of Punjab and others v. Rafiq Masih and contended that an amount mistakenly paid to an employee in excess, while in service and without his misrepresentation, cannot be recovered from the employee after his retirement. The learned counsel

for the respondents do not dispute the position of law as laid down by the Hon"ble Apex Court.

4. After hearing both the sides and on a perusal of the judgment reported in AIR 2015 SC 696 (supra), it is noticed that in that case, all the employees in the bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. All the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, the employees were in receipt of monetary benefits, beyond their due. The payment of higher dues to the employees in all those cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. The issue before the Hon"ble Apex Court was, whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. It was held by the Hon"ble Supreme Court that the amount paid to the employee in excess by mistake, while in service and without his misrepresentation, cannot be recovered from the employee, after his retirement.

5. It is clear from the above said case law that an amount mistakenly paid to an employee in excess, while in service and without his misrepresentation, cannot be recovered from the said employee after his retirement. In view of the law laid down by the Hon"ble Apex Court, the respondents would not be entitled to recover the excess amount paid to the petitioner towards salary and other benefits, while the petitioner was in service, after her retirement.

6. In view of the aforesaid circumstances, it is hereby declared that the respondents would not be entitled to recover the excess amount paid to the petitioner towards the salary and other benefits, while the petitioner was in service, after her retirement.

7. Rule is made absolute in the aforesaid terms with no order as to costs.