

(2022) 12 BOM CK 0099
In the Bombay High Court
Case No : Writ Petition No. 9397 Of 2022

Pushpabai Chandrakant Joshi

APPELLANT

Vs

Vasantrao Naik Marathwada Krushi Vidyapeeth

RESPONDENT

Date of Decision : 22-12-2022

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 134A
Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983 — Section 54

Citation : (2022) 12 BOM CK 0099

Hon'ble Judges : Ravindra V. Ghuge, J; Sanjay A. Deshmukh, J

Bench : Division Bench

Advocate : Bhargav B. Kulkarni, M. N. Navandar

Final Decision : Allowed

Judgement

Sanjay A. Deshmukh, J

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner has prayed for issuance of Writ of Mandamus or direction in the nature of Writ of Mandamus, to quash and set aside the order of recovering of an amount of Rs.8,36,120/-, which was illegally recovered by the respondent University and for refund.
3. The petitioner contended that she is the wife of deceased Chandrakant Joshi, who was working with the respondent University as a Stenographer. He retired voluntarily on 16th August, 2011 from the service of the respondent University. He got various retiral benefits. He died on 30th December, 2011. The petitioner informed that fact to the University. She is getting pension. However, the University by its letter dated 16th September, 2013 directed the recovery of Rs.8,36,120/- from the retiral benefits of her husband under the caption of excess payment recovery.

4. The petitioner urged that, that alleged recovery is illegal and against the provisions of law. By the Resolution of the Government of Maharashtra, the approval for awarding of higher pay grade to the stenographers in the Agricultural Universities in Maharashtra was given. The petitioner contended that no opportunity of hearing was given to her. Therefore, the impugned order was passed arbitrarily, without following the principles of natural justice and directed that an amount of Rs.4,18,060/-, may be deducted from the gratuity and from the monthly pension of the petitioner, in 36 equal installments. The petitioner contended that the impugned order is illegal. Therefore, she sent representations annexure 'L' collectively (on 10.08.2018, 23.09.2018, 28.03.2019, 05.05.2019, 24.07.2019, 03.08.2019, 10.08.2019, 21.12.2019 and 15.02.2020) to the respondent University. Because of inaction on the part of the University, she sent notice through her advocate dated 1st June, 2022 by RPAD. However, the University did not respond to it.

5. The learned counsel for the petitioner further submitted that no undertaking was taken from the husband of the petitioner, for refund of excess payment. There is delay, but it is not deliberately caused. The order was passed without giving opportunity to the petitioner, which is against the principles of natural justice. She, therefore, prayed to allow this writ petition by setting aside the impugned order.

6. The respondent University, by filing reply affidavit, strongly opposed the contentions raised by the petitioner in the writ petition. It is contended that,

(a) The petition is not maintainable because of delay of nine years of passing of the impugned order. The delay is not explained. Therefore, the writ petition deserves to be dismissed.

(b) That as per Section 54 of the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983, there is total control of the State Government regarding creation of new posts, grant of pay scales, allowances etc.

(c) The petitioner is bound to follow the directions of the State Government.

(d) As per the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes of 1990 and the Maharashtra Civil Services Rules, as amended, are applicable mutatis mutandis to the employees of the University.

(e) Therefore, as per Section 134A of the Maharashtra Civil Services (Pension) Rules, 1982, an excess amount paid, can be recovered.

(f) That pay-scale to the Shorthand Writers as per the Government Resolution dated 3rd October, 1974 was fixed on the condition of passing of shorthand test at the speed of 110 words per minute and the typing test at the speed of 40 words per minute, has been directed by the State Government in the said resolution.

(g) The husband of the petitioner could not pass that test.

(h) However, he submits documents to prove that he passed the higher level examination in the year 1993 for getting higher pay-scale.

(i) Therefore, the resolution was passed in the meeting held on 25th November, 1984 bearing Resolution No.74 of 1984 for getting higher pay-scales as per the resolution dated 3rd October, 1974.

(j) The Executive Council, therefore, approved the qualification as under:-

"1. Short Hand:- 120 Words Per Minute (English)

AND

Typist:- 40 Words Per Minute (English)

OR

Typist:- 40 Words Per Minute (Marathi)

2. The Certificate of Short Hand Writer and Typing Certificate must be issued from Bureau of Examination Directorate of Education, Maharashtra State or must be issued by Government recognized Industrial Training Institute and the same be produced.

3. The Stenographers be Higher Pay Scale according to the seniority and Seniority should be taken into account considering the seniority of Junior Stenographers.

4. For Award of Higher Pay Scale last 3 Years Confidential Report should be satisfactory.

5. As a Typist at least 8 Years of service should have been in the University.

6. The number of holders of Higher Pay Scale should not exceed 50 percent of the total number of Stenographers."

(k) The husband of the petitioner was not possessing such technical qualification.

(l) Therefore, the recovery was directed as per Section 134A of the Maharashtra Civil Services (Pension) Rules, 1982.

(m) Considering the delay and legal recovery, it is lastly prayed to dismiss the writ petition.

(n) Admittedly, from the husband of the petitioner, no such undertaking was taken by the respondent University. No opportunity was given to the petitioner for giving her explanation.

7. Mr. Navandar, the learned counsel for the respondent University is relying upon the authority of Z. H. Lamak Vs. Accountant General-II, (A and E) Maharashtra, Nagpur and others, 2012(6) Mh.L.J 341, in which it is held that release of payment, to which the petitioner was not entitled, cannot be said to be either unjust or illegal.

8. In the case of Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors, (2009) 3 SCC 475, the Honourable Supreme Court held in paragraph No.27 as under:-

"27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99."

9. Thus, the Honourable Supreme Court directed to refund the recovered amount of the teachers, which was illegally recovered.

10. In the case in hand also, excess amount was not paid on account of misrepresentation or fraud on the part of the employee. The alleged fraud or misrepresentation on the part of husband of the petitioner is not established by the respondent by filing alleged documents. Considering the hardship caused to the petitioner, recovery of the said amount is not justified as no opportunity of hearing was given to the petitioner. Thus, principles of natural justice were not followed by the University. Therefore, we are inclined to exercise discretion in favour of the petitioner. For the reasons discussed above, the argument of Mr. Navandar, learned counsel for the respondent University is not accepted.

11. Hence, the following order:-

ORDER

I. The writ petition is allowed.

II. The impugned order dated 16th September, 2013 passed by the respondent University for recovery of an amount of Rs.8,36,120/-, is quashed and set aside.

III. The respondent University is directed to repay an amount Rs.8,36,120/- to the petitioner within three months, else pay 6% interest on it.

12. Rule is made absolute in the above terms.