
(2016) 02 BOM CK 0067
In the Bombay High Court
Case No : Writ Petition No. 7386 of 2015

Rajaram Namdeo Sudke

APPELLANT

Vs

State of Maharashtra and Ors.

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2016) 5 ALLMR 509 : (2016) 2 BCR 833 : (2016) 3 MhLJ 675

Hon'ble Judges : S.S. Shinde;P.R. Bora, JJ.

Bench : Division Bench

Advocate : S.K. Tambe, AGP, Vivek Bhavthankar, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

S.S. Shinde, J. - Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. By way of filing present Writ Petition under Article 226 of the Constitution of India, the petitioner takes exception to the order dated 2nd July, 2015, issued by the respondent No.4, by Outward No.477/2015.

4. It is the case of the petitioner that, the petitioner was appointed on the post of Road Karkoon on 1st April, 1987. The service record of the petitioner is unblemished and clean. It is further the case of the petitioner that, he was appointed and converted on C.R.T. on 1st April, 1987, as per the policy decision of the Assured Progress Scheme, the petitioner has completed 12 years of service from the date of appointment on 1st April, 1999. The Government of Maharashtra inspired by the scheme prepared by the Central Government to grant senior pay scale/certain benefits, after completing regular service of 12 years for Class-III and Class-IV employees, by issuing Government Resolution dated 8th June, 1995, took policy decision to amalgamate the post of the Civil Engineer Assistant in one cadre, and accordingly, 2439 posts were created in the

pay scale of Rs. 1640-2900 in the Year 1999.

5. It is further the case of the petitioner that, the petitioner completed 45 years of age in the year 2002, therefore, as per policy, the exemption was granted in his case from passing the departmental examination, which is prescribed in routine for granting pay scale of higher post i.e. Junior Engineer. The respondents, keeping in view the continuity of service, and the qualification as well as the eligibility of the petitioner, granted higher pay scale of Junior Engineer to the petitioner, and extended benefits on 26.11.2010. The petitioner retired after completion of 58 years of service on 30th June, 2015. After retirement, the proposal for pension and other benefits of the petitioner was forwarded to the respondent No.4, seeking no due certificate, so as to process and clear proposal of the pension and other benefits. However, the respondent No.4, instead of granting such certificate, issued the impugned order, and directed to recover the amount of Rs. 1,87,694/- from pension and other benefits of the petitioner. It is further the case of the petitioner that, said action of the respondent No.4 was unilateral and contrary to the provisions of law as well as principles of natural justice.

It is further the case of the petitioner that, the Finance Department of the State of Maharashtra has issued corrigendum dated 23rd December, 2015. It is stated in the said corrigendum that, in case first/second time bound pay scale/benefits, if wrongly granted to the ineligible employees, the said benefits can be withdrawn. But, amount already disbursed cannot be recovered from the said employees. It is submitted that, already the petitioner retired from the service, and therefore, the impugned order issued by the respondent No.4 is contrary to the ratio laid down by the Hon"ble Supreme Court in the case of State of Punjab and others v. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334. Therefore, the learned counsel appearing for the petitioner submits that, the Petition deserves to be allowed.

6. On the other hand, the learned counsel appearing for the respondents submits that, the respondents are entitled to recover the amount, which was wrongly paid to the petitioner, though he was not entitled for the same.

7. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents. With their able assistance, perused the pleadings in the Petition, annexure thereto, and the relevant Government Resolution, the Judgment of the Hon"ble Supreme Court in the case of State of Punjab [cited supra], and also the Judgment of the Bombay High Court, Bench at Nagpur in the case of Namdeo Baliram Paikrao and others v. Mah. Jeevan Pradhikaran, Mumbai and others in Writ Petition No. 5185 of 2014 with connected Petitions, decided on 8.6.2015..

8. At the outset, it would be apt to reproduce herein below the corrigendum issued by the Finance Department, Government of Maharashtra, dated 23rd December, 2015, bearing No. "vkiz;ks 1015@iz0d0 111@2015@lsokand3%

3- ;k ;kstus[kkyh ifgyk@nqljk vFkok nksUgh ykHk eatwj dsY;kuarj izR;{k inksUurh ukdkjysY;k vFkok inksUurhl vik= BjysY;k deZpkand;kauk ns.;kr vkysys ykHk dk<+wu ?ks.;kr ;srhy] v"kk ykHkkaph olwyh dj.;kr ;sbZy0 Inj olqyhph laiw.kZ tckcnkjh lacaf/kr vkLFkkiuk vf/kdkand;kph jkghy ,soth iq<+hyizek.ks okpkosand

3- ;k ;kstus[kkyh ifgyk@nqljk vFkok nksUgh ykHk eatwj dsY;kuarj izR;{k inksUurh ukdkjysY;k vFkok inksUurhl vik= BjysY;k deZpkand;kauk ns.;kr vkysys ykHk dk<+wu ?ks.;kr ;srhy] ek= fnysY;k ykHkkaph olqyh dj.;kr ;s.kkj ukgh0

gs "kq/nhi=d ;k vkns"kkP;k fnukadkaiklwu ykxw gksbZy0"

True translation of the relevant portion of the above-mentioned Corrigendum dated 23rd December, 2015, reads thus:

3. Instead of "Under this scheme, after grant of first/second or both benefits, such benefits of those employees who refused actual promotion or have been held ineligible for promotion, will be withdrawn, and such benefits will be recovered. The responsibility of recovery will be of concerned establishment officer" should be read, as under:

3. "The first/second or both benefits, granted under this scheme to those who refused actual promotion or those employees who have been held ineligible for promotion, will be withdrawn, however, recovery of such benefits will not be made.

This corrigendum will be effective from the date of this order.

(Underline supplied)

Admittedly, the petitioner stood retired on account of age of superannuation on 30.06.2015. Therefore, in view of the aforesaid Corrigendum issued by the concerned Department, the amount which was paid in excess to the employee cannot be recovered. It further appears that, in Namdeo Baliram Paikrao [cited supra], the Division Bench of the Bombay High Court, Bench at Nagpur, has allowed the bunch of Writ Petitions and declared that, the petitioners therein are entitled to the benefit of the pay scale of a Junior Engineer on completion of 12 years of service from the date of their entry in the cadre of Technical Assistant/ Mistry/Karkoon etc. Therefore, it appears that, even the contentions of the respondent Nos.2 to 4 that, the payment was paid wrongly in excess also appears to be without keeping in view, afore-mentioned observation in the case of Namdeo Baliram Paikrao [cited supra].

9. The Supreme Court in the case of State of Punjab and others v. Rafiq Masih [White Washer] and others [cited supra] in para 18 held thus:

18. It is not possible to postulate all situations of hardship which 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, based on the decisions referred to herein above, we may, as a ready reference, summarise

the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, 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.

10. Upon careful perusal of the aforesaid categories from para 18 of the Judgment in the case of State of Punjab [cited supra], the case of the petitioner would be covered in category (i) and (ii). In that view of the matter, we have no hesitation to allow the Petition in terms of prayer Clause-B. Accordingly, Writ Petition is allowed in terms of prayer Clause-B.

11. Rule made absolute on above terms. Petition stands disposed of accordingly.