(2018) 11 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No.3671 Of 2018

Ramesh Janardhan Meshram APPELLANT

Vs

Lokshahir Annabhau Sathe Development Corporation Through Its Managing Director And Others RESPONDENT

Date of Decision : 28-11-2018

Acts Referred:
Prevention of Corruption Act, 1988 — Section 7, 13(1)
Indian Penal Code, 1860 — Section 34, 120B, 384, 406, 408, 420, 465, 467, 468, 471

Citation : (2018) 11 BOM CK 0055

Hon'ble Judges : S.S.Shinde, J;K.K.Sonawane, J

Bench : Division Bench

Advocate : Devidas R.Shelke, M.R.Kulkarni

Final Decision : Dismissed

Judgement

S.S.Shinde, J

[1] This Petition is filed with the following substantive prayers:

(B) By issuing writ of mandamus or any other appropriate writ, order or direction an impugn order passed by respondent No.2 dated 28.04.2017 may

kindly be set aside.

(C) By issuing writ of mandamus or any other appropriate writ, order or direction respondent No. 1, may please be directed to release the amount of

gratuity of Rs.808000/Â with interest from the date of deduction, which is recovered / deducted as an arrears of promotional benefits and increment

of July 2016.

Â [2] It is the case of the petitioner that, he joined the services of the respondent â?" Corporation as an â??Office Assistantâ?? on 22nd January, 1986, on daily wages basis. He was made permanent in the service as an Office Assistant on 14th June, 1990. He was promoted as District Manager

on 24th April, 1993. It is the case of the petitioner that, the respondents ought to have promoted him as Regional Manager in the Year 1996. However,

he was not promoted though similarly situated employees were promoted on said post. The petitioner was promoted as Regional Manager on 29th

January, 2005. It is further the case of the petitioner that, he was given promotional benefits in the year 2013 with retrospective effect from the Year

2005, as it was given to the other similarly situated employees, along with the petitioner.

[3] It is further the case of the petitioner that, all of sudden the respondents issued notice on 3rd December, 2015, to the petitioner, stating therein that

the petitioner was wrongly given promotional benefits with retrospective effect and he shall deposit the amount of Rs.8,08,637/Â, which was disbursed

to him towards said benefit. The petitionerâ??s increment for the month of July 2016, was also withheld. The General Manager, Mr.Zombade, also

received promotional benefits with retrospective effect. However, proceedings were not initiated against him for recovery of the amount, which was

disbursed to him towards promotional benefits. It is the case of the petitioner that, the act of recovery of amount from his gratuity was for extraneous

reasons and only with an intention to harass the petitioner.

[4] The learned counsel appearing for the petitioner submits that the respondents initiated proceedings for recovery of amount of Rs.8,06,937/Â for

extraneous consideration from the gratuity amount, which was payable to the petitioner. The petitioner stood retired on 30th June, 2017, and the

respondents have no power or authority to deduct the amount of arrears paid to the petitioner. Once the statutory promotion is granted by giving

retrospective effect; the mandatory benefits received by such employee can not be withdrawn. The Officer, who issued the notice, was not authorized

to issue such notice. In support of the aforesaid contentions, the learned counsel appearing for the petitioner placed reliance upon the ratio laid down in

the following cases;

(1) High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh AIR 2016 SC 3523, (2) Y.K.Singla Vs. Punjab National Bank and Ors. (2013) 3

SCC 472, (3) State of Punjab Vs. Rafiq Masih AIR 2015 SCC 696Â and the judgment in the case of (4) Kewal Singh Vs. State of Punjab and others

in CWP No. 26252 of 2013, decided on 11th May, 2017.

[5] Pursuant to the notices issued to the respondents, respondent nos. 1 to 3 have filed affidavitÂinÂreply. It is stated in the said affidavitÂinÂreply

that the respondent Corporation has been established by the Government of Maharashtra for economic and social upliftment of Matang Samaj and 12

subÂ castes comprised in the Matang Community. The said Corporation was established by issuing Government Resolution dated 6th March, 1985.

The respondent Corporation is controlled by the Government of Maharashtra and its day to day activities are conducted and controlled through the

Social Justice Department of Government of Maharashtra. The respondent Corporation was initially provided with the authorization share capital of

Rs.2.50 crores and then from time to time this capital was increased, and now the Government of Maharashtra has raised the share capital to

Rs.300/Â crores and contributed it through the State Exchequer. The entire funding for various schemes and to run the establishment of respondent

Corporation is given by the State of Maharashtra through its regular budget. Thus, the entire expenditure on functioning of the Corporation including

the salary of employee is met from â??Public Exchequerâ?. In order to have smooth functioning and for assessment of schemes implemented and

accounting of the expenditure incurred by the respondent Corporation, it has given status of the Limited Company by registering it under company law.

Respondent Corporation is nothing but one wing of the Department of Social Justice of State of Maharashtra. It is the Government of Maharashtra

Undertaking.

[6] Initially, the appointment of the petitioner was as an Office Assistant by respondent on 21st May, 1990. He was given promotion on the post of

District Manager by order dated 22nd April, 1993. He was given promotion on the post of Regional Manager by issuing office order dated 29th

January, 2005.

[7] It is further stated in the said affidavit that, in the month of October 2014 to December 2014, there was a news of malfunctioning of the Chairman

and Managing Director. One Shri Sudhakar Bhalerao, the member of the Legislative Assembly, raised the question on 22.12.2014 in the assembly

that, the huge corrupt practices has been adopted by the Chairman and

Managing Director of the respondentÂCorporation, and by doing so the

respondent Corporation has been duped to the amount of Rs.147 crore and more. The allegation of illegal appointments, promotions, illegal sanctioning

and disbursing the loan etc. were also made. The assurance of the investigation in the alleged financial transactions, and administrative actions, was

given on the floor of Assembly. After investigation, the FIR has been lodged at Dahisar Police Station, Mumbai on 18th July, 2015, under Section 7

and 13 [1] of the Prevention of Corruption Act and under Sections 406, 408, 420, 465, 467, 468, 471, 384, 120 (B) r/w. 34 of the IPC against those

officials, who were managing affairs of the Corporation.

[8] It is further stated in the said affidavitÂinÂreply that, from 13th August, 2012 to 12th December, 2014, one Shri Ramesh Nagnath Kadam, MLA

was the Chairman of the respondent Corporation. During the said period, Shri Santosh Shankar Ingale and Shri Shravan Kisan Bavane, the

Government Officers, were the Managing Director of the respondent Corporation. They were arrested. The above instances are indicated only to

show that in what circumstances the appointments / promotion orders were issued during the said period.

It is further stated in the said affidavit in reply that, when the present respondents came to know that without following statutory procedure and rules,

some of the employees and also the petitioner were granted deemed date of promotional benefits, so the respondent issued notice to the petitioner to

return the amount of Rs.8,06,937/Â to the Department, since he was one of the beneficiary. The petitioner replied the said notice. Thereafter, the

respondents verified the documents and the reply filed by the petitioner, and it revealed that there was no sanction from the Government for the said

post, and respondents came to a conclusion that the present petitioner has been given promotion illegally and directed him to return the difference

amount, which was disbursed to the petitioner, with effect from January 2005 to December, 2013 to the tune of Rs.8,06,937/Â, by order dated 17th

January, 2014. It is stated in the affidavit in reply that criteria for promotion is to see seniority as well as merit and to see the vacancy and sanction of

the post from the Government. In the present case, without sanctioning of the post by the Government, deemed date of promotional benefits was

granted to the petitioner, which is against rules.

[9] In para 13 of the said affidavit, it is stated that in the order dated 28th April, 2017, it is clearly mentioned that in the year 2012Â14, as there were

irregularities found in the administration of the respondent Corporation in respect of illegal appointments, deemed date of promotion, time bound

promotions; though twice notices were given to the employees. The reply filed by those employee were not satisfactory and therefore the respondent

Corporation decided to withdraw deem date of promotion and recover the benefits, which were received by the employees, as a result of irregularity

and illegality committed by the persons, who were looking after the administration of the respondent Corporation. Pursuant to the FIR registered

against the Board of Directors, the concerned MLA and other persons whose names are mentioned in the FIR, the law was set in motion for

investigation, and investigation is yet in progress. The petitioner was the beneficiary of irregularity and illegality committed during the period from the

year 2012Â14 by the persons, who have managed the administration of the respondent Corporation, and as a result it was decided to withdraw the

deemed date of promotion of the petitioner and also to recover benefits/amount wrongly paid to the petitioner.

[10] The learned counsel appearing for the respondents relying upon the averments in the affidavit in reply and annexures thereto submits that the

petitioner was the beneficiary of the illegalities and irregularities committed by the Management during the period 2012Â2014, in collusion with the

employees like the petitioner, the benefit granted in favour of the petitioner is rightly withdrawn. It is submitted that the petitioner has not placed on

record the documents/material for redressal of his grievance that he was not promoted at appropriate time, and therefore, belated attempt of the

petitioner to receive such benefits in collusion with the officials, who were managing the affairs of the respondent Corporation during the period

2012Â14, cannot be countenanced. The General Manager has made new pay fixation of the petitioner. It is submitted that the judgments of the

Supreme Court relied upon by the petitioner are pronounced in different facts situation and the employees therein did not receive benefits as a result of

irregularity and illegalities committed by the administration. Therefore, the learned counsel appearing for the respondents submits that the Petition is

devoid of any merits and same may be dismissed.

[11] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and learned counsel appearing for the

respondents. Upon careful perusal of the pleadings in the Petition and annexures thereto, it appears that the petitioner joined the office of the

respondent Corporation on daily wages on 22nd January, 1986. It further appears that with effect from 14th June, 1990, the petitioner was taken on

regular basis as an Office Assistant. He was promoted as District Manager on 24th April, 1993. Thereafter, the petitioner was promoted in the

service as Regional Manager on 29th January, 2005. It is the contention of the petitioner that the statutory promotion as Regional Manager was due in

the year 1996, but he was denied the promotion and the employees, who were similarly situated like the petitioner, were promoted as Regional

Manager. In support of the aforesaid contentions, the petitioner has not placed any documents / material on record. The petitioner has also not placed

on record copy of the representation / representations or the applications or letters addressed to the respondent Corporation for redressal of his

grievance that his promotion as Regional Manager was due in the year 1996, and the same was not given to him. It is also contended by the petitioner

that, he was given promotional benefits in the year 2013 with retrospective effect from 2005 as it was given to other employees. The petitioner has not

demonstrated in the petition how the petitioner was entitled for the promotional benefits in the year 2013 with retrospective effect from 2005.

[12] It is clear from the contents of the notice dated 3rd December, 2015, issued by the respondent Corporation to the petitioner that the petitioner was

wrongly given promotional benefits with retrospective effect, and thus he shall deposit an amount of Rs.8,08,637/Â. If the reply filed by the

respondents is carefully perused, it is stated that the promotional benefits given to the petitioner in the year 2013 was as a result of irregularities and

illegalities committed by the members of the Managing Committee, who were managing the affairs of the respondent Corporation for the period

2012Â14. Upon careful perusal of the averments made in the affidavit in reply filed by the respondents, it is abundantly clear that due to illegalities and

irregularities committed by the then Members of the Managing Committee, such benefit was given to the petitioner. The petitioner retired from the

services of the respondent on 30th June, 2017. The notice which was issued by the respondents for recovery of amount of Rs.8,06,937/Â, which was disbursed to the petitioner though he was not entitled for the said amount, was given on 3rd December, 2015. The impugned order was passed by

respondent no.2 on 28th April, 2017, before the retirement of the petitioner from the employment of the respondents.

[13] As already observed, the petitioner has not placed on record tangible material which would unequivocally indicate that he was entitled for the

promotional benefits with retrospective effect from the year 2005. Upon considering the case in its entirety, this Court is of the opinion that there is no

mala fide exercise on the part of the respondents to recover the amount of Rs.8,06,937/Â. It clearly surfaced on record that said amount was wrongly

paid to the petitioner as promotional benefits as a result of irregularity and illegalities committed by the Managing Committee Members, who were

managing the affairs of the respondent Corporation for the period 2012Â14. The affidavit in reply filed by the respondents makes it very clear that the

respondent Corporation has already lodged the FIR against the then Managing Committee Members, Officials and also sitting MLA [Member of

Legislative Assembly] for irregularities and illegalities committed by them, thereby misappropriating and siphoning the huge money and grants received

by the Corporation from the State Government. The facts of the present case are clearly distinguishable visÂaÂvis the facts of the cases cited by the

learned counsel appearing for the petitioner, wherein the Supreme Court has laid down the situations wherein recovery of the excess amount paid by

the employer to the employee is impermissible. In the facts of those cases, the fact situation like in the present case was not similar, inasmuch as, in

the present case it is alleged by the respondent that as a result of mismanagement/illegalities and irregularities committed by the then Managing

Committee members of the respondent Corporation, wrongly promotional benefits are given to the petitioner. It is also relevant to mention here that

pursuant to the impugned order passed by the respondents, necessary corrective steps have been taken by the respondent and pay scale of the

petitioner has been fixed on 9th August, 2017.

[14] In that view of the matter, we are unable to persuade ourselves to grant relief as prayed for by the petitioner. Hence, the Writ Petition stands

rejected.

