

(2022) 04 BOM CK 0049
In the Bombay High Court
Case No : ?Writ Petition No. 3466 Of 2021

Sunanda

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 142
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 129(B)

Citation : (2022) 04 BOM CK 0049

Hon'ble Judges : A. S. Chandurkar, J;M.S. Jawalkar, J

Bench : Division Bench

Advocate : T.D. Mandlekar, N.P. Mehta

Final Decision : Disposed Of

Judgement

M.S. Jawalkar, J

1. Rule. Rule made returnable forthwith. Heard finally with consent of both the parties.

2. By this petition, the petitioner is challenging the order dated 30.03.2019 by which the Regional Transport Office, Nagpur has sought to recover an amount of Rs.51,535/- towards over payment made. The petitioner has also challenged the communication dated 11.08.2021 by which it has been informed that interest under Rule 129(B) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, the said Rules) cannot be paid on the amount of Rs.1,96,101/-.

3. It is the case of the petitioner that on 01.11.1966 the petitioner was appointed as a Junior Clerk in the Office of respondent No.3 who is under direct control of respondent Nos. 1 and 2. From the date of appointment till her retirement the petitioner was never communicated any adverse remarks nor was subjected to departmental enquiry at any point of time. On the other hand, Ku. K.B. Petkar, who was similarly situated employee as that of petitioner got a deemed date of promotion w.e.f. 05.09.1980 by Office Order dated 01.11.2000. One Mr. Umathe

was also promoted w.e.f. 05.09.1980. Both these employees namely Ku. Petkar and Mr. Umathe were admittedly junior to the petitioner. On 01.11.2000, the petitioner came to know about such an injustice therefore she had made various representations enclosing the seniority list and demanded deemed date promotion from 05.09.1980 but in vain. Again, the petitioner and other employees made representation to the Authorities time and again and a Departmental Committee's Meeting was held on 08.06.2009, which recommended promotion of the petitioner w.e.f. 31.07.1989. The petitioner was however not promoted as Senior Clerk and was demanding deemed date promotion from 05.09.1980 along with arrears of pensionary benefits and other allied consequential benefits.

4. On 18.11.2010, the petitioner has approached the Maharashtra Administrative Tribunal, Nagpur by filing her Original Application No. 825/2010 and prayed for a relief of the deemed date promotion w.e.f. 05.09.1980. The said application was decided along with other Original Applications on 04.01.2018. The respondents were directed to grant deemed date of promotion to the petitioner as Senior Clerk w.e.f. 05.09.1980 with all other monetary and consequential benefits within a period of four months. Thereafter, the petitioner and other 10 employees were granted deemed date of promotion vide order dated 24.07.2018. The said Office Order dated 24.07.2018 was admittedly after 6 months and in breach of judgment passed by the Hon'ble Maharashtra Administrative Tribunal, Nagpur. On 05.01.2019, the petitioner was paid an amount of Rs.1,96,101/- but the petitioner did not get any interest on the arrears of her pensionary benefits. The respondents have failed to give interest on arrears. As per Rule 129(B) of the said Rules, the petitioner was entitled to get 10% interest from which date the arrears accrued i.e. 05.09.1980. On 30.03.2019, the respondent No.3 illegally issued Recovery Notice to the petitioner directing the recovery of Rs.51,535/-. The respondents have alleged that excess payment has been made to the petitioner and therefore recovery is necessitated. According to the State Government Notification dated 26.02.2019, it is directed by the State Government that if on account of erroneous calculations excess payment is made to the retired Class-III and Class-IV employees such amount should not be recovered. The petitioner made representation to respondent No.3 on 15.07.2019 and requested not to effect recovery from her.

5. The petitioner, aggrieved by the action of the respondents, approached this Court by filing Writ Petition No.3357/2020. In the said petition, this Court vide order dated 15.01.2021, directed the respondent No.2 to decide the representation made by the petitioner within six weeks.

6. The petitioner filed Contempt Petition No. 183/2021 for deliberate non compliance of the judgment and directions issued by this Court in Writ Petition No.3357/2020. On 11.08.2021, the respondent No.2 decided the representation against her and again issued recovery notice. This Court disposed of the contempt petition giving liberty to challenge the impugned order dated

11.08.2021.

Being aggrieved by the office order dated 30.03.2019 passed by the respondent No.3 for recovery of Rs. 51,535/- illegally and the office order dated 11.08.2021 passed by respondent No.2 refusing to pay interest as per Rule 129(B) of the Rules, the petitioner has filed the present petition.

7. Shri Mandlekar, learned Counsel for the petitioner relied on judgments in the case of State of Punjab and others .Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC, 334, Gulabrao Narayanrao Chandurkar(D) through L.Rs. Vs. State of Maharashtra and Anr. reported in 2017 (4) ALL MR 299, State of Maharashtra and others .Vs. Satyadeo Nandakishore Awashti and anr. reported in 2014 (1) ALL MR 163 and the decision of this Court in Writ Petition No. 1192/2021 dated 12/01/2022 (Prasad Vinayak Sohoni .Vs. The Treasury Officer, Thane and anr.). He submitted that the petitioner retired from service on 31.10.2004. Having been granted deemed date of promotion from 05/09/1990 and the pensionary benefits being paid, there was no justification to direct recovery of alleged excess payments post retirement.

8. Learned Assistant Government Pleader submitted that the petitioner has been granted deemed date of promotion with effect from 05.09.1980, as per the order of the learned Maharashtra Administrative Tribunal, Nagpur. The petitioner has been given all the benefits that are permissible as per law. However, while verifying the incidental benefits paid to the petitioner, the respondent No.3 committed discrepancies in the statement of arrears due and drawn. Hence the difference was rectified and revised arrears statement was prepared. Accordingly, communication was sent to the petitioner regarding recovery of the additional amount of Rs.51,535/- on 30.03.2019. There is no question of application of Rule 129(B) of Maharashtra Civil Services Pension Rules which is in respect of interest payable on account of delay in disbursement of pension. The amount of Rs.1,96,101/-paid to the petitioner is the difference in salary as per the revised pay fixation. Thus the said provision cannot be applied in the instant case. The communication dated 30.03.2019 regarding recovery of excess payment on account of arrears statement of due and drawn pay is justified and proper.

9. We have heard both the parties at length. The communication which is under challenge is dated 30.03.2019. If dates are perused the Maharashtra Administrative Tribunal passed its judgment on 04.01.2018. As per this order deemed date of promotion was granted. As the said order of granting deemed date of promotion was to be issued by the senior most Officer, it was forwarded to Commissioner of Transport. The Commissioner passed an order directing deemed date of promotion to be granted and further needful action vide order dated 13.07.2018. Accordingly, Regional Transport Office, Nagpur issued order dated 24.07.2018. By letter dated 30.03.2019 it was informed to the petitioner that while verifying the service book, it was found that there was difference on account of due and drawn pay and it was found that an amount of Rs.51,535/- was paid excess while paying arrears to the petitioner on grant deemed date of

promotion. The petitioner placed reliance on Government Resolution dated 26.02.2019. So far as reliance placed on the judgment in Rafiq Masih (supra) by the petitioner is concerned, the petitioner cannot get the benefit of exemption from refund as the said mistake of excess amount of payment while calculating arrears was rectified immediately and there was no deduction as such from the pension or pensionary benefits. It is neither iniquitous nor harsh nor arbitrary. It is held by the Hon'ble Apex Court in Rafiq Masih (supra) itself on which petitioner placed reliance that :

"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power. "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

10. So far as prayer for grant of interest is concerned, Rule 129(B) speaks of interest on delayed disbursement of pension. There is no delay in disbursement of pension. Therefore, petitioner is not entitled for interest on arrears after being granted deemed date of promotion.

11. In view of aforesaid, the impugned orders are justified. However, in the light of the fact that the petitioner is retired, the purpose would be served if the recovery of excess payment is directed to be made within a period of one year by equal installments. The respondent No.3 is thus directed to implement the order dated 30.03.2019 of recovery of amount, however, that amount will be recovered in equal installments spread out over a period of one year. The writ petition is disposed of with aforesaid directions. Rule accordingly. No costs.