IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2829 OF 2024

1. Shri Ramesh Shyamrao Shinde,
Aged 62 yrs, Occ. Retired,
R/o. Anna Bhau Sathe Marg, Ward No.1,
District Buldhana 443 301

2. Shri Rama Sopan Ingle,
Aged 62 yrs, Occ. Retired,
R/o. Gopal Krishna Nagar, Shiv Colony,
Malkapur, District Buldhana 443 101

3. Shri Kisan Rambhau Nimkarde,
Aged 63 yrs, Occ. Retired,
R/o. Ward No. 16,
Govindpura, Jalgaon Jamod,
District Buldana 443 402

4. Shri Govind Naryan More,
Aged 61 yrs, Occ. Retired,
R/o. Ward No. 20,
Tahsil and District Buldhana 443 401

5. Shri Pralhad Ambadas Shinde,
Aged 63 yrs, Occ. Retired,
R/o. Behind Civil Court, Mehkar,
District Buldhana 443 301 ... **PETITIONERS**

...V E R S U S...

1.The State of Maharashtra
Through it's Secretary
Law and Judiciary Department,
Mantralaya, Mumbai 32

2. State of Maharashtra,
Through its Secretary,
Finance Department, Mantralaya,
Mumbai 32

3. The Registrar General of Bombay
High Court, Fort, Mumbai 400 032

4. The Principal District Judge,
Buldana,
Tahsil and District Buldana 443 301 .....**RESPONDENTS**

Mr. A.P. Sadavarte, Advocate for the petitioners.
Mr. H.D. Marathe, Assistant Government Pleader for respondent Nos. 1 and 2.
Mr. Abhay Sambre, Advocate for respondent Nos. 3 and 4.

CORAM:- BHARATI DANGRE & ABHAY J. MANTRI, JJ.
DATE : 08.10.2024

JUDGMENT (Per : Abhay J. Mantri, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally, by consent of learned Counsel for the parties.

2. The petitioners, the retired employees on the establishment of respondent No. 4 are aggrieved by the orders of recovery dated 04.11.2022, 07.10.2020, 05.03.2022, 21.09.2021 and 25.10.2021, issued by respondent No.4—The Principal District Judge, Buldana, directing recovery of the amount of arrears from their retiral benefits, despite their superannuation between 29.02.2020 to 30.09.2022.

3. The petitioners are retired class III and IV employees on the establishment of respondent No. 4. In view of the applicability of the 6th and 7th Pay Commission, respondent No. 4 revised the pay fixation of the petitioners, and they were awarded monetary benefits accordingly. The petitioners did not make any false representation nor applied for an increase in their salary in any manner.

However, based on the Government Resolution dated 01.09.2015, the Account Officer of the Pay Verification Unit raised an objection on 22.09.2022 about the pay fixation of the petitioners and therefore, respondent no. 4-initiated action of recovery of excess payment vide impugned orders.

4. Mr. Sadavarte, the learned Counsel for the petitioners, vehemently contended that the petitioners are class III and class IV employees and that, as per the law laid down by the Hon'ble Supreme Court in the case of ***State of Punjab and Others vs. Rafique Masih, (2014)8 SCC 883*** (***Rafiq Masih***), respondent No. 4 is prevented from recovering the excess payment made to the petitioners after their retirement, who retired on or before 30.09.2022.

It is further canvassed that the undertaking given by the petitioners would not make respondent No. 4 entitled to the recovery as the petitioners were not at fault for said excess payment. It is also contended that the undertaking given was usual in a cyclostyle manner, and therefore, the passing of the order of recovery is liable to be quashed and set aside.

The learned Counsel for the respondents does not dispute the settled principle enunciated in the case of ***Rafiq Masih*** (supra). The only contention is that respondent No. 4 could recover the excess amount paid to the petitioners in terms of their undertakings, and therefore, the orders impugned are just and proper.

5. We have considered the submissions, perused the record and gone through the decision relied upon by the petitioners.

The short question that arises is, "*Is respondent No. 4 entitled to recover the excess amount paid to the petitioners from their retiral benefits, who were undisputedly class III and class IV employees*?

6. While dealing with the aforesaid issue, we would like to refer to the principles enunciated in the case of ***Rafiq Masih*** (*supra*), wherein the Apex Court held that, ***in the following situations, a***

recovery by the employer would be impermissible in law, which read thus,:-

> “ *(i)* ***Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).***
>
> *(ii)* ***Recovery from retired employees or employees who are due to retire within one year of the order of recovery****.*
>
> *(iii) Recovery from 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.*
>
> (*emphasis supplied*)

In addition to the above, the Hon’ble Apex Court in ***Rafiq Masih*** has held that “It is a settled position of law as held in Rafiq Masih (supra) that “it is not possible to postulate all situations of hardship, that 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, the recovery from the employee or employees to class-III, who are due for retirement or due for retirement within one year, in that case, the recovery of the amount by the employers from the said employee is impermissible.”

7. Undisputedly, in this case, the petitioners are class III and class IV employees, who have retired on or before 30.09.2022 and they have neither made any representation to receive the alleged excess payment but the respondent authority committed the mistake in fixing the petitioner's pay, for which they can take no blame. In such an eventuality, in our view, the principle enunciated in propositions No. (i) and (ii), in the case of ***Rafiq Masih*** (supra), are squarely applicable as the recovery notices were issued after their retirement.

8. Apart from the above, the Hon’ble Apex Court has dealt with the concept of “justice, equity and good conscience” and, invoking the principle of equity, ruled that the benefits which were extended to the employees, like the petitioners, after their retirement cannot be abruptly withdrawn, on realisation of their mistake by the employer of granting excess payment. Even it is not the case of the respondents that the petitioner gained such benefits by making misrepresentation or fraud.

It is a settled principle of law that, based on the principle of equity, a person cannot be penalised for no fault on his part.

9. Learned Counsel for the respondents emphasised the furnishing of undertaking by the petitioner while opting for the revised pay scale; it is noticed that it is common practice that the employer, at the time of fixation of the revised pay scale or the pension case, used to obtain an undertaking from each employee.

10. Perusal of the undertakings reveals that they are cyclostyle ones obtained in the usual course while granting benefits of provisions of the 6th and 7th Pay Commissions. It is not the case of the respondents that the petitioners were at fault while fixing the pay. On the contrary, there was a mistake on the part of respondent No. 4, who fixed the pay incorrectly. Therefore, the undertakings given by the petitioners would hardly be of any assistance to the respondents in support of their claim.

11. It further seems that the employer, based on a cyclostyle undertaking, taken in the usual course/manner, issued the impugned orders of recovery of the amount. However, on perusal of the impugned communication/order, it appears that respondent

authority detected incorrect pay fixation of the petitioners, which the employer carried out, and the petitioners were not at all fault; therefore, as per condition Nos. (i) and (ii) enumerated in the case of ***Rafiq Masih***(supra), respondents are prevented from recovering the excess amount, if any, paid to the petitioners. Hence, we do not find substance in the contention of the learned counsel for the respondents in that regard.

12. From the facts discussed above, it is evident that this is a fit case wherein it can be said that if the respondent-employer is permitted to recover the excess amount paid to the petitioners, who retired from the service, it would be far more wrongful, improper, iniquitous than what it would be if the employer is not permitted to recover. That being so, the decision of the Hon'ble Apex Court in ***Rafiq Masih*** (supra) is squarely applicable to the case. Admittedly, there is no allegation of any fraud or misrepresentation at the behest of the petitioners.

13. In addition, it also appears that the Principal District and Sessions Judge, Nasik, has also passed similar orders, which were challenged before the Principal Seat of this Court at Bombay. As per

the directions in the said matter, the Government of Maharashtra issued a Government Resolution dated 04.10.2023, ensuring that no excess amount should be recovered from the employee's salary.

14. In the wake of the above, we deem it appropriate to quash and set aside the impugned orders of recovery of excess payment since the petitioners were not at all fault/responsible for receiving excess payment. Further, we deem it appropriate to direct the respondent's authority to refund the amount recovered, if any, from the arrears/retiral benefits of the petitioners. Accordingly, we pass the following order:

i) The petition is allowed.

ii) The impugned orders dated 04.11.2022, 07.10.2020, 05.03.2022, 21.09.2021 and 25.10.2021, issued by respondent No.4 - The Principal District Judge, Buldana, are hereby quashed and set aside.

iii) Respondent authorities are directed to refund the amount recovered, if any, from the petitioners' retiral benefits within eight weeks of receiving a copy of this order.

(ABHAY J. MANTRI, J.) **(BHARATI DANGRE, J.)**

R. Belkhede,
Personal Assistant