

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3171 OF 2007

Godawari Marathwada Irrigation Development
Corporation, Aurangabad, through its
Executive Engineer, Aurangabad Irrigation
Division, Aurangabad .. Petitioner

Versus

Joshi Vilas Shankarrao .. Respondent

Shri S. S. Thombre, Advocate for the Petitioner.
Shri Sujeet D. Joshi, Advocate for the Respondent..

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.**

DATE : 09TH APRIL, 2015.

PER COURT :

. Mr. Thombre, the learned counsel for the petitioner submits that, the Tribunal committed an error in allowing the original application partly and setting aside the order of the petitioner claiming recovery of the amount that is excess amount paid to the respondent on account of wrong pay fixation. The learned counsel submits that, there cannot be any dispute that wrong pay fixation was done. The petitioner cannot take the benefit of the mistake committed in wrong fixation of the pay scale. The learned counsel further submits that, even the petitioner had unequivocally agreed that, the excess amount if

paid, be recovered and he does not have any objection for the same. The respondent agreed that, the said recovery be made from the leave encashment, insurance and other claims. In view of the said unequivocal and unambiguous undertaking given by the respondent, the respondent is not entitled to resile and take a different stand.

2. Mr. Joshi, the learned counsel for the respondent submits that, the same was after retirement, wherein the respondent was in need of money and that cannot be a ground to claim recovery after retirement. Even if on account of wrong pay fixation some excess amount is paid, then the recovery is not permissible. The learned counsel relies on the judgment dated 18.12.2014 of the Apex Court in a case of **State of Punjab and others Vs. Rafiq Masih (While Washer) etc.** in Civil Appeal No. 11527 of 2014 with other connected civil appeals.

3. We have considered the submissions canvassed by the learned counsel for respective parties. The argument of the learned counsel for the petitioner could have been considered, had the undertaking been given by the respondent at the time of pay fixation. When the respondent was in need of pensionary benefits, at that time said undertaking is obtained from the respondent. The Apex Court in a case of **State of Punjab and others Vs. Rafiq Masih (While Washer) etc.**

referred supra has summerized the situation wherein recoveries by the employers will be impermissible in law. The same are as under :

- "(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."

4. In the present case, the case would be squarely covered by clauses (ii) and (iii) of the said judgment of the Apex Court. The Tribunal has not committed any error in partly allowing the original application. The writ petition as such is disposed of.

Rule discharged. No costs.

5. The petitioner has deposited the amount in this Court, which was the amount recovered by the petitioner. In view of the disposal of the writ petition, the respondent is entitled to withdraw the said amount along with accrued interest, if any.

[A. I. S. CHEEMA, J.]

[S. V. GANGAPURWALA, J.]

bsb/April 15