

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5043 OF 2015

SHANTINATH ANNASAHEB BANSODE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for petitioner : Mr. S. G. Bhalerao
A.G.P. for respondent nos. 1 to 3 : Mr. D. R. Korde
.....

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 2nd JULY, 2015

P.C. :-

1. Mr. Bhalerao, the learned counsel for petitioner states that at the time of retirement of the petitioner, recovery is made from the gratuity amount of the petitioner on the ground that some excess benefits, i.e. increments due to stagnation, during the tenure of service of the petitioner were wrongly granted. According to the learned counsel, recovery cannot be made at the time of retirement or after retirement, even if wrongly excess payment has been made. The petitioner is not responsible for the said excess payment nor the petitioner is guilty of any fraud or misrepresentation. The learned counsel relied on the judgment of the Apex Court in a case of *State of Punjab and others v/s. Rafiq Masih (White Washer)* dated 18.12.2014.

2. The learned AGP submits that as excess amount was paid during the period of service of the petitioner, the same was rightly recovered from

the gratuity amount of the petitioner.

3. It is not disputed that the petitioner has retired in the year 2009 and recovery is claimed in the year 2010. The Apex Court, in the case of State of Punjab (*Supra*) has specifically observed that recovery from retired employees or the employees who are due to retire within one year of the order of recovery is impermissible in law. In the present case, it is not disputed that the amount sought to be recovered and the order of recovery is passed at the time of retirement of the petitioner. It is also not the case of the respondents that the said excess payment was made on account of misrepresentation on the part of the petitioner. Considering the above, we pass the following order:

ORDER

- I. The respondents shall refund the amount recovered from the gratuity amount of the petitioner allegedly towards the excess payment made while in service, within a period of four (04) months from today.
- II. Writ Petition is accordingly disposed of with aforesaid observations. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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