

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

WRIT PETITION NO.5557 of 2015

Devidas s/o Gangaram Lohar
Age :- 61 years, Occ.: Pensioner,
R/o. N.D., 42,J-B/5/4, Hudco,
Vaibhav Nagar, New Nanded,
Nanded.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary Buildings &
Communication Department,
Mantralaya, Mumbai.
2. Chief Administrative Officer
Maharashtra Jeevan Pradhikaran
Express Tower, 4th Floor,
Nariman Point, Mumbai -21.
3. Senior Account Officer,
Maharashtra Jeevan Pradhikaran,
Cidco Bhavan (D.K.) 3rd Floor,
Belapur, Navi Mumbai,
Mumbai.
4. The Deputy Chief Accountant Officer,
Maharashtra Jeevan Pradhikaran
Cidco Bhavan (D.K.) 3rd Floor,
Belapur, Navi Mumbai.
Mumbai.
5. Chief Engineer,
Maharashtra Jeevan Pradhikaran
Opp. Milind College, Chhavani,
Aurangabad.

...RESPONDENTS

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Shri V.D.Patnoorkar, Advocate of Petitioner;
Mr.S.D.Kaldage AGP for Respondent / State;
Mr. Deepak P.Bakshi, Advocate for Respondent Nos. 2 to 4.

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**CORAM: S.S.SHINDE
AND
P.R.BORA, JJ.**

Date of reserving the judgment : **09.12.2015**

Date of pronouncing the judgment: **15.12.2015**

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JUDGMENT : (PER P.R.BORA, J.)

1) Heard. Rule. Rule made returnable and heard forthwith with the consent of the parties.

2) The petitioner has challenged the deduction of an amount of Rs.3,10,789/- from his pension amount as directed by respondent No.4 vide order dated 15.04.2015.

3) Petitioner was in the employment of respondent No.5 and got retired on 31.12.2009 from the post of Assistant Draftsman, after attaining the age of superannuation. It is the contention of the petitioner that, the deduction of the aforesaid amount so directed by respondent No.4 is wholly unjust, incorrect and illegal. It is the further contention of the petitioner that the impugned order dated 15.04.2015 has been passed without giving any notice or without giving any opportunity of hearing to the petitioner. It is the further contention of the petitioner that, after five years of his retirement, now no recovery can be directed or made from his pension amount.

4) One Shri Suryakant Sadanand Indap has filed an affidavit in reply on behalf of respondent Nos. 2 to 5 contending that, the pay of the petitioner was wrongly fixed in the higher scale of Draftsman, whereas the petitioner was eligible for the post of Assistant Draftsman with effect from 01.01.1997. It is the further contention of these respondents that the petitioner was eligible for next time bound promotion to the post of Draftsman on 01.01.2009, however the petitioner has been wrongly given the benefit with effect from 10.01.1998 till his retirement. According to the respondents, they are entitled to recover the excess amount which has been wrongly paid to the petitioner.

5) After having heard the learned Counsel appearing for the respective parties, it appears to us that the present petition is liable to be allowed in view of the law laid down by the Hon'ble Apex court in the case of **State of Punjab Vs. Rafiq Masih, 2015 AIR SCW 501**. It is not in dispute that the petitioner got retired on 31.12.2009 after attaining the age of superannuation. The impugned order directing recovery from the pension amount of the petitioner, alleging the excess payment made to the petitioner because of wrong fixation of the pay, is passed on 15.04.2015 i.e. admittedly after the period of five years from the retirement of the petitioner. Further, the respondents have not alleged that the petitioner had played any role in alleged wrong fixation of pay in higher scale. It is thus evident that, if at all any excess payment would have been made to the petitioner, he cannot be held responsible for the same or no blame can be attributed on his part. Considering the law laid down in the earlier judgments

on the issue, the Hon'ble Apex Court in the case of **State of**

Punjab (cited supra) has held the recovery from the employees, when the excess payment has been made for the period in excess of five years before the order of recovery is issued, is impermissible.

6) The Hon'ble Apex Court in the case of **State of Punjab** (cited supra) has held as under:

"It is not possible to postulate all situations of hardship, which 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, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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.

7) In view of the law laid down as above, since the excess payment alleged to have been made to the petitioner is for the period in excess of five years before the order of recovery is issued, is impermissible. We are, therefore, inclined to allow the present petition and hence pass the following order:

ORDER

a) The impugned order dated 15.04.2015 passed by the respondent No.4 is quashed and set aside.

b) Any amount recovered in pursuance of the aforesaid notice be refunded to the petitioner.

. Petition stands allowed in aforesaid terms. Rule made absolute. No order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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S.P.Rane