

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

WRIT PETITION NO. 10982 OF 2014

Shankar S/o Narsinh Dange,
Age : 59 Years, Occu. : Nil,
R/o Mai Apartment, Behind
Community Hall, Adarsh Colony,
Latur, Tq. & Dist. Latur. .. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Water Resources Department,
Mantralaya, Mumbai - 32.
2. The Chief Engineer, Irrigation
Department, Aurangabad.
3. The Superintendent Engineer,
Dakshata Pathak, Parimandal Office,
Adalat Road, Aurangabad.
4. The Superintendent Engineer,
Beed Irrigation Project Circle,
Parali Vaijinat, Tq. Parali Vaijnath,
Dist. Beed.
5. The Executive Engineer,
Lower Terna Canal Division - 2,
Latur, Tq. & Dist. Latur. .. Respondents

Shri Tukaram M. Venjane, Advocate for the Petitioner.
Smt. S. A. Dhumal, A.G.P. for the Respondent No. 1.
Shri S. D. Dhongde, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.
DATE : 01ST JULY, 2015.**

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Mr. Venjane, the learned counsel for the petitioner states that, eight months after the retirement of the petitioner, the respondents under the pretext of re-fixation of salary have claimed recovery of Rs. 13,29,159/-. The learned counsel submits that, the said order is erroneous and deserves to be set aside. The salary was revised and fixed from time to time during the tenure of service. The petitioner was not at fault. The respondents have done the fixation of salary and the same was not based on any misrepresentation of the petitioner. After the retirement the respondents cannot claim the recovery. The learned counsel relies on the judgment of the Apex Court in a case of **Syed Abdul Qadir Vs. State of Bihar** reported in **(2009) 3 SCC 475**, so also judgment of the Apex Court in a case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.** dated 18th December 2014 in Civil Appeal No. 11527 of 2014.

2. Mr. Dhongade, the learned counsel for the respondent No. 3

submits that, the fixation of salary was erroneously done in respect of the petitioner during the tenure of service. The pay unit has taken an objection and considering correct pay scale that would be applicable to the petitioner and after doing re-fixation, it was found that excess salary is paid to the petitioner and the same is sought to be recovered.

3. It is not disputed that, the petitioner stood retired on attaining age of superannuation on 31.12.2013. The impugned order is passed on 06.08.2014.

4. The petitioner is only aggrieved by the order of recovery being passed and claimed against him. As such, we are not concerned with the re-fixation done. It would only be the order of recovery that is assailed and considered in the present writ petition. The recoveries claimed on the basis of erroneous fixation since the year 1991. The petitioner has already retired from service. It would amount to claiming recovery after retirement and amounts to hardship. Even asking that payment has been mistakenly made by the employer. The Apex Court in a case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.*** referred supra has laid down the categories wherein recoveries by the employer are impermissible in law. The same are culled out by the Apex Court 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 employers right to recover.

5. The case of the present petitioner would come under clause (ii) laid down by the Apex Court above.

6. In the result the order of recovery claimed vide order dated 06.08.2014 (Exhibit - K) is quashed and set aside.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[V. K. JADHAV, J.]

Sd/-

[S. V. GANGAPURWALA, J.]