

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

WRIT PETITION NO.11228 of 2015

Dr.Nivruti s/o Baliram Kalyan,
Age :- 60 years, Occ.: Pensioner,
R/o Pot No.10, Belanagar,
Taroda (Kd), Nanded,
District Nanded.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
rural Development Department ,
Mantralaya, Mumbai - 32.
2. The Principal Secretary,
Finance Department,
Mantralaya, Mumbai - 32.
3. The Accountant General (A&E),
Maharashtra -2,
Civil Lines, Nagpu - 440 001.
4. The Director of Health Services,
Arogya Bhavan,
St. Georges Hospital Campus,
Near C.S.T. Mumbai.
5. The Deputy Director of Health Services,
Latur Division, Latur.
6. The Chief Executive Officer,
Zilla Parishad, Nanded.
7. The District Health Officer,
Zilla Parishad, Nanded.

...RESPONDENTS

...

Shri Gajanan G. Kadam, Advocate for Petitioner;
Mr. S.D. Kaldate, AGP for Respondent / State;
Mr. S.g.Sangle, Advocate for Respondent No.6.

...

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

Date of reserving the judgment : **15.12.2015.**
Date of pronouncing the judgment : **21.12.2015.**

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

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

2) The order dated 12.05.2015, whereby respondent No..6 has directed the recovery of an amount of Rs.4,39,335/- from the amount payable to the petitioner towards death cum retirement gratuity, is questioned in the present petition. The amount sought to be recovered from the petitioner is alleged to have been paid to the petitioner in excess because of wrong fixation of his pay.

3) The petitioner has challenged the recovery of the aforesaid amount on the ground that, the alleged recovery is sought from him after his retirement, and further that it is for the period in excess of five years before the impugned order of recovery is issued. The learned Counsel appearing for the petitioner has relied upon the judgment of the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih and others, (2015) 4 SCC 334.**

4) The learned AGP appearing for the State has supported the action of recovery stating that, the fact of excess payment made to the petitioner came to be revealed when the pension proposal was scrutinized by the office of the Accountant General. Learned AGP further submitted that, the petitioner is bound to refund the amount paid in excess to him since he was not entitled to receive the said amount.

5) We have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. We have also perused the documents filed on record. Facts involved in the present petition are not in dispute. The alleged recovery is not challenged by the petitioner on the ground that, the recovery is wrongly directed against him. In other words, the petitioner has not disputed that, the amount of Rs. 4,39,335/- has been paid to him in excess, because of the wrong fixation of pay. The petitioner has challenged the recovery as we have earlier mentioned on two grounds; first that the alleged recovery is sought after his retirement and further that, the amount sought to be recovered from the petitioner is of the period during the year 2007-2013 i.e. in excess of five years before the order of recovery is issued.

6) The Hon'ble Apex Court in the case of **State of Punjab and others** (cited supra), after having considered the earlier judgments on the issue, has delineated few situations, wherein recovery from the employees would be impermissible in law, in para 18 of the said judgment, which reads thus:

"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) It is not in dispute that, the petitioner got retired from the employment of Respondent No.6 on 31.08.2013 after attaining the age of superannuation. There is further no dispute that the order of recovery has been passed on 12.05.2015. From the order of recovery, it is further quite clear that, the excess payment alleged to have been made to the petitioner, because of wrong fixation, has been made in the period from 2007 to 2013. Thus, the case of the petitioner falls within categories (ii) and (iii) delineated in para 18 of the Judgment of the Hon'ble Apex Court in the case of **State of Punjab and others**, reproduced herein above.

8) In the circumstances, the impugned order of recovery can not sustain and deserves to be set aside. Hence, the following order:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 12.05.2014 passed by the respondent No.6 is quashed and set aside.
- (iii) Rule is made absolute. No order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

...

S.P.Rane