

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

WRIT PETITION NO. 11513 OF 2014

Namdeo Kishanrao Sawant .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri V. D. Sapkal, Advocate for the Petitioner.

Shri G. K. Thigle, Addl.G.P. for Respondent Nos. 1 and 2.

The respondent Nos. 3, 5 and 6 are served.

The Respondent No. 4 deleted.

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

DATE : 13TH JULY, 2015.

PER COURT :

. The learned counsel for the petitioner seeks leave to delete the respondent No. 4. Leave to delete the respondent No. 4 is granted at the risk of the petitioner.

2. The learned counsel for the petitioner states that, the recovery is claimed from the petitioner and for that the respondents have withheld the gratuity amount. The petitioner stood retired on 31.12.2011 and the order of recovery is passed on 14.08.2014. The learned counsel submits that, such an order could not have been passed after retirement. The learned

counsel relies on the judgment of the Apex Court in a case of **State of Punjab Vs. Rafiq Masih (White Washer) etc.** reported in ***A.S.C.W 2015(4) page 334.***

3. We have also heard the learned Additional Government Pleader, who submits that, as the pay fixation was wrongly done, the recovery is rightly claimed.

4. The Apex Court in a case of **State of Punjab Vs. Rafiq Masih (White Washer) etc.** referred supra has observed as under :

"12. 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 hereinabove, 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.

5. The petitioner stood retired on 31.12.2011. The recovery is claimed in the year 2014. More over the petitioner was a Class III employee. The case of the petitioner is squarely covered by the judgment of the Apex Court in a case of **State of Punjab Vs. Rafiq Masih (White Washer) etc.** referred supra.

6. In the light of that, we pass the following order.

7. The respondents shall not make any recovery pursuant to the impugned communication against the petitioner. If the amount of gratuity is withheld on the said ground, the same be released. The writ petition is disposed of. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]