

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

WRIT PETITION NO.993 OF 2016

Dr. Bapurao s/o. Vishvnath Kadam,
Age 60 Years, Occu. Pensioner,
R/o. At Post Loha,
Tq. Loha, Dist. 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, Nagpur-440 001

[Copies to be served on GP
High Court Bench Aurangabad]

- 4] The Director of Health Service,
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

...

Mr. G.G.Kadam, Advocate for Petitioner
Mrs. A.V.Gondhalekar, AGP for Respondent Nos.
1 to 5
Mr. S.B.Pulkundwar, Advocate for Respondent
Nos.6 and 7.

...

**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Reserved on : 11.04.2016
Pronounced on : 28.04.2016

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard. Rule. Rule made returnable
and heard finally with the consent of the
parties.

2] The order dated 19.08.2014, whereby
respondent No.7 has directed recovery of an
amount of Rs.8,48,735/- from the amount
payable to the petitioner towards death cum
retirement gratuity, is questioned in the
present petition. The petitioner has served
as an Medical Officer and stood retired from
the service. 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 order on the ground that the alleged recovery is sought from him after his retirement, and further that it is for the period exceeding five years prior to issuance of the impugned order. 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 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 carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. We have also perused the documents filed on record. The 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.8,48,735/- 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 that too in respect of the period prior to five years of the impugned order i.e. from 2006 to 2009.

6] The Hon'ble Apex Court in the case of **State of Punjab and others** (supra), after having considered the earlier judgments on the issue, has delineated few situations, wherein recovery from the employees would be impermissible in law as stated, 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 30.06.2015 after attaining

the age of superannuation. There is further no dispute that the order of recovery has been passed on 19.08.2014. 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 2006 to 2014. Thus, the recovery from 2006 to 2009 is for a period in excess of the years before issue of the impugned order of recovery, the case of the petitioner falls within categories (ii) fully and (iii) partly 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 19.08.2014 passed by the respondent No.7 is quashed and set aside.

iii] Rule is made absolute. No order as to costs.

Sd/-
[**SANGITRAO S.PATIL**]
JUDGE

Sd/-
[**S.S.SHINDE**]
JUDGE