

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

WRIT PETITION NO.9420 OF 2015

Tukaram S/o Gopal Pinjan,
Age : 59 years, Occu. Nil (Retired),
R/o: C/o Shri Babasaheb G. Salunke,
Shivaji Nagar Garkeda Parisar,
Aurangabad.

.. Petitioner.

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Water Supply and Sanitation
Department, Mantralaya,
Mumbai-32.
2. The Member Secretary,
Maharashtra Jeewan Pradhikaran
Express Tower, Nariman Point,
Mumbai-32.
3. The Chief Administrative Officer,
Maharashtra Jeewan Pradhikaran
CIDCO Bhavan, Belapur,
New Mumbai.
4. The Executive Engineer,
Maharashtra Jeewan Pradhikaran
Jal-Vyavasthapan Vibhag
Nashik.
5. The Dy. Chief Account Officer (II)
Maharashtra Jeewan Pradhikaran
CIDCO Bhavan, Belapur,
Mumbai.

..Respondents.

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Mr. R.P.Bhumkar, Advocate for petitioner;
Mr. S.B. Pulkundwar, AGP for Respondent No.1 / State
Mr. Deepak P. Bakshi, Advocate for Respondent Nos.2
to 5.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 9th March, 2016.

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

1) Heard. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, the petition is taken up for final disposal at admission stage.

2) By filing the present petition the petitioner has taken exception to recovery of the amount of Rs.1,32,751/-, directed to be recovered from the pension amount of the petitioner. As is revealing from the contents of the petition, the recovery amount, as aforesaid, is towards excess amount allegedly paid to the petitioner because of the wrong fixation of his pay w.e.f. 1.1.2006. It is the contention of the petitioner that since he stood retired from the services of the respondents w.e.f. 30th June, 2014 after attaining the age of superannuation, no recovery can be directed from his pension amount even if any excess amount would have

been paid to him because of wrong fixation of pay as alleged by the respondents in view of the law laid down by the Hon'ble Apex Court in the case of State of Punjab and Ors. Vs. Rafiq Masih – reported in 2015 (4) SCC 334 (Civil Appeal No. 11527 of 2014 with other connected appeals decided on 18th December, 2014.) The petitioner has further contended that his pay was rightly fixed w.e.f. 1.1.2006 and it was not required to be revised. It is the further contention of the petitioner that before carrying out the re-fixation of his pay and directing the recovery of the amount, alleged to have been paid in excess, no notice or opportunity of hearing was given to the petitioner by the respondents. The petitioner has, therefore, prayed for the directions against the respondents not to recover the said amount.

3) The respondents though have raised the objection as regards to the jurisdiction, in view of the fact that the petitioner is stated to be residing at Aurangabad after his retirement, the objection deserves to be rejected. The respondents have not made any submission as regards to the other contentions raised in the petition.

4) From the material placed on record by the petitioner, there seems no dispute that the petitioner stood retired from the post of Fitter (Class-III employee) on 30th June, 2014 after attaining the age of superannuation. It is further not in dispute that the recovery of the amount of Rs.1,32,751/- has been directed against the petitioner from his pension amount after his retirement.

5) In view of the admitted facts, as aforesaid, the order of recovery cannot be sustained in view of the law laid down by the Hon'ble Apex court in the case of State of Punjab and Ors. Vs. Rafiq Masih (cited supra). In the aforesaid judgment, the Hon'ble Apex court has summarized 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."

6) In the instant case, the petitioner is admittedly a Class-III employee. There is further no dispute that the alleged recovery is directed against the petitioner after his retirement and the recovery so directed is of the period in excess of five years before passing of the order of the recovery.

7) In the above circumstances, the order passed by the respondents directing recovery of Rs.1,32,751/- from the pension amount of the

petitioner towards the excess payment allegedly made to the petitioner because of wrong fixation of pay, is quashed and set aside. The petition stands disposed of. Rule is made absolute in aforesaid terms.

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv

fldr 8.3.2016