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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION No. 3722 OF 2016

***Upper Treasury Officer,
District Treasury Office***

...Petitioner

Vs.

***Smt. Fulabai Ramchandra Awghade
and Ors.***

...Respondents

Mr. A.I. Patel -AGP for the Petitioner
None for the Respondents

***CORAM : V. M. KANADE &
M.S. SONAK, JJ.***

DATE : JULY 8, 2016

P.C. :

1. The State of Maharashtra is challenging the order passed by the Maharashtra Administrative Tribunal. It appears that on account of mistake of a clerk, working in the office of the State of Maharashtra, the date from which family pension was to be paid to Respondent No.1, was wrongly calculated and an amount of Rs.400/- p.m. more was paid to her. It is the case of the State Government that she is entitled for the pension of Rs.1,275/-, whereas she was paid Rs. 1,735/- per moth.

Recovery proceedings, therefore, were initiated against her.

2. The MAT noted that there was a mistake committed by one of the officers and, therefore, excess amount was paid. The Tribunal has held that hereinafter the pension has to be paid at Rs.1,275/- p.m. However, the amount, which was already paid, should not be recovered.
3. The learned counsel for the Petitioner submits that an undertaking was given by her that in the event an excess amount is paid, the same would be refunded.
4. It is a well settled position in law that if an excess amount is paid as a result of mistake committed by one of the clerks/ officers, working in the office, then the employee should not be penalized and recovery proceedings should not be initiated. The Apex Court in catena of cases has held that the recovery in such cases should not be proceeded. In fact, from the impugned order and more particularly paragraph 20 of the said order, it appears that the Learned PO, on instructions from the Additional Treasury Officer, candidly informed the Court that the Tribunal may restrain recovery and quash the recovery order.
5. In view of the concession made by the Learned PO, on instruction, also this impugned order has been passed. In fact, a writ petition should not

have been filed by the Petitioner in this Court. Moreover, Respondent No.1 is a widow, who is 72 years old and is receiving partly family pension of Rs. 1,275/-. Writ petition ideally can be dismissed by imposing heavy costs, however, on considering the submissions made by the learned AGP, Mr. Patel, by not imposing any costs, the writ petition is dismissed and is accordingly disposed of.

M.S. SONAK, J.

V.M. KANADE, J.