

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8169 OF 2015**

Dattatraya B. Yadav

.. Petitioner.

vs.

State of Maharashtra and ors.

.. Respondents.

Mr.C.T. Chandratre for the petitioner.

Mr. C.P. Yadav, AGP for the respondents-State.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**

DATE : 17 MARCH 2016.

P.C.:

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the judgment and order dated 14 November 2014 made by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 321 of 2014 instituted by the petitioner seeking restraint upon recovery of an amount of Rs.3,09,580/- or thereabouts from the petitioner, who has since retired from the services. It is the case of the petitioner that an amount of Rs.43,065/- has already been recovered from the petitioner and therefore, the petitioner is also entitled to refund of the said amount from the respondents.

3] Heard learned counsel for the parties.

4] The petitioner, joined government service as a Clerk in 1968 and retired in 2005 from the post of Administrative Officer. The petitioner, in his capacity as an Administrative Officer, was Drawing and Disbursing Officer (DDO) dealing with pay and accounts works. The petitioner has also discharged duties as DDO in the office of Deputy Commissioner of Police, Bandra from 1997 to 2000, in DCP Wireless Section from 2000 to 2003 and DCP, MT Section, Nagpada from 2003 to 2005. Thus, it is quite clear that the petitioner has handled responsible posts and can be said to have sufficient knowledge in the matter of pay allowances etc. in government service.

5] Despite aforesaid, the petitioner, from 1975 to 2005, i.e., for a period of almost 30 years, drew house rent allowance (HRA), despite full knowledge that he was dis-entitled to receive the same, because he had been allotted a government accommodation from the year 1975 onwards. The petitioner was himself the DDO, and it is not even the petitioner's case that he was unaware that he was dis-entitled to draw HRA. The petitioner's contention that his superiors should have detected error, does not commend to us.

6] In view of the aforesaid, we really see no reason to interfere with the impugned order. However, learned counsel for the petitioner has contended that the observations made by the MAT to the effect that the petitioner has committed a fraud or that his conduct is unbecoming of a government service are too harsh

and further, the petitioner was not afforded any opportunity of hearing before the same was recorded in the impugned judgment and order. Learned counsel for the petitioner has submitted that such observations are stigmatic and before the same were recorded, the petitioner, ought to have been afforded opportunity to explain his conduct. The record bears out that the petitioner was not entitled to draw HRA, which he has drawn over such length. Nevertheless, observations with regard to commission of fraud or conduct unbecoming of government servant, appear to be rather harsh in the facts and circumstances of the present case. Therefore, we expunge such observations.

7] Further, considering the submission made by learned counsel for the petitioner that recovery of almost Rs.10,000/- per month from out of pension amount each month, is quite harsh. We accede to his request and direct recovery be effected at the rate of Rs.5000/- (Rupees Five Thousand) each month, until the outstanding excess amount is recovered by the respondents. With this modification, the equities, will be sufficiently balanced.

8] Rule is accordingly, made partly absolute to the aforesaid extent only. There shall however, be no order as to costs

(CHIEF JUSTICE)

(M.S.SONAK, J.)