

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 4212/2015.

Shri Raghunath Tukaram Bhiogade

-VERSUS-

State of Maharashtra and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI
& P.N. DESHMUKH, JJ.

DATE : MARCH 09, 2016.

Heard Shri R.P. Masurkar, learned Counsel for
the petitioner and Mrs. B.H. Dangre, learned Government
Pleader for respondents.

2. During arguments learned Government
Pleader sought an adjournment to enable her to obtain
further instructions, however, we find that the issue is
concluded in favour of petitioner by judgment of Hon'ble
Apex Court in case of **State of Punjab and others .vrs.**
Rafiq Masih (2014 (14) Scale 300).

3. 5 principles to be kept in mind while
considering the recovery from an employee are laid down

by the Hon'ble Apex Court there. Here the petitioner, a State Government employee has reached his age of superannuation on 28.02.2009. At that time, he was working in Naxal affected area, and therefore getting special allowance. While working out his last pay for computation of pension, this special allowance has been taken into account. Accordingly his pension was fixed on a higher side and he continue to receive it till today.

4. The State Government has in the meanwhile applied its mind to this aspect and found that allowance paid to such employees could not have been treated as part of their emoluments, and therefore, their pension could not have been calculated by including the special allowance. Accordingly petitioner has been informed on 10.06.2015, that he has been paid extra amount towards pension and it needs to be recovered.

5. Petitioner has not challenged the correctness or otherwise of the policy decision. According to the petitioner, he was not at fault in the matter and as he is retired, in meagre pension he and his dependents are managing his household, hence, if recovery is allowed, it will be cruel.

6. In this connection, the Hon'ble Supreme Court

has in the above judgment has considered the issue and we find that present facts are covered by principle nos. (ii) and (iii) of the said judgment.

7. Thus, recovery for amount already paid to the petitioner as part of his pension is not legally open. It is open to respondents to scale down his pension after revising his last pay, by deleting the allowances paid to him, and thereafter re-fix his monthly pension and pay it in future. Hence, with said directions, we quash and set aside the recovery for amounts paid to the petitioner in past. Writ Petition is disposed of accordingly. No costs.

JUDGE

JUDGE

Rqd.