

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

WRIT PETITION NO. 6912 OF 2014

Shri Babasaheb S/o Prabhu Bhalerao,
Age - 59 years, Occu. - Nil,
R/o Sanmitra Colony,
Behind Tahasil Office, Partur,
Tal.-Partur, Dist.- Jalna.

.. Petitioner

Versus

- 1] Maharashtra State Road Transport Corporation, through its Dy. General Manager, [P& IR] State Transport Central Office, Maharashtra Vahatuk Bhavan, Mumbai. 400008.
- 2] Chef Employment Officer, Maharashtra State Road Transport Corporation, State Transport Central Office, Maharashtra Vahatuk Bhavan, Mumbai. 400008.
- 3] Chief Account Officer, Maharashtra State Road Transport Corporation, State Transport Central Office, Maharashtra Vahatuk Bhavan, Mumbai. 400008.
- 4] Regional Manager, Maharashtra State Road Transport Corporation, Aurangabad Region, Aurangabad.
- 5] Divisional Controller, Maharashtra State Road Transport

Corporation, Jalna Region,
Jalna.

- 6] Assits. Audit Officer,
IAP Aurangabad Region,
MSRTC, Aurangabad. .. Respondents

Shri S. V. Chaudhari, Advocate for the Petitioner.

The Respondent Nos. 1 to 4 and 6 are served.

Shri D. S. Bagul, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.
DATE : 12TH APRIL, 2017.**

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The grievance of the petitioner is that, from the gratuity amount/retiral benefits payable to the petitioner, respondents have deducted Rs. 1,00,000/- on the ground that excess amount was paid to the petitioner while in service and also some amount from the salary which is paid during the last year of his retirement.

3. The learned counsel submits that, the petitioner was working as a Head Clerk/Supervisor. The same is a Class – III post. The learned counsel submits that, if the employee is on the verge of retirement or has retired and belongs to Class – III

category, the recovery cannot be claimed on the ground that while in service some excess amount was paid. The learned counsel relies on the judgment of the Apex Court in a case of **State of Punjab Vs. Rafiq Masih (White Washer) and others** reported in (2015) 4 SCC 334.

4. Mr. Bagul, the learned counsel for the respondent No. 5 submits that, from 1998 till 2012 some excess amount was paid to the petitioner on account of wrong fixation of pay. The same is recovered from the gratuity amount and also from the salary during his last year of employment. According to the learned counsel, the petitioner has an alternate remedy before the Labour Court. Notional increment was given to the petitioner, which was not applicable at all. It was found that Rs. 1,00,000/- has been paid excess to the petitioner, as such recovery was rightly claimed.

5. It is not disputed that the petitioner on attaining age of superannuation has retired on 31.10.2013. An amount of Rs. 60,000/- has been deducted after his retirement from gratuity amount and an amount of Rs. 40,000/- is recovered from his salary, which is paid during the last year of his retirement.

6. It is not a case of respondent No. 5 that, the petitioner had played any fraud or is guilty of misrepresentation while notional increment was awarded to the petitioner. It is also not the case

of respondents that the petitioner had given any undertaking to the respondents that in case subsequently it is found on account of some wrong increments are given, the petitioner would repay the said amount. The amount is recovered from the retiral benefits after his retirement and also from the salary during the year of his retirement. The petitioner belongs to Class – III category i. e. group C.

7. In the light of the above, the judgment of the Apex Court in a case of **State of Punjab Vs. Rafiq Masih (White Washer) and others** referred to supra would squarely apply. The respondents would be dis-entitled to recover the said amount.

8. In the light of the above, we pass following order.

9. The respondents shall refund the amount of Rs. 1,00,000/- deducted by it to the petitioner within a period of four (04) months from today. It is submitted that, pension is also not been disbursed to the petitioner. The respondents shall take effective steps to pay the retiral benefits/pension as may be admissible to the petitioner expeditiously.

10. Rule is made absolute in above terms. No costs.

Sd/-

[SANGITRAO S. PATIL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]