

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

Writ Petition No.1941 of 2016

* Sumangala d/o Meghashyam Palsikar,
Age 60 years,
Occupation :Retired,
C/o. U.G. Kakde,
Near Maruti Mandir,
Shrikrishna Nagar,
At & Post Sillod
Taluka Sillod,
District Aurangabad. .. **Petitioner.**

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Finance Department Mantralaya,
Mumbai - 32.
- 2) The Chief Executive Officer,
Zilla Parishad, Aurangabad.
- 3) Chief Accounts and Finance
Officer, Zilla Parishad,
Aurangabad.
- 4) The District Health Officer,
Zilla Parishad, Aurangabad.
- 5) The Medical Officer,
Primary Health Centre
Palod, Taluka Sillod,
District Aurangabad. .. **Respondents.**

Shri. Vasant B. Patil, Advocate, for petitioner.

Shri. A.R. Kale, Assistant Government Pleader,
for respondent No.1.

Shri. P.R. Nangare, Advocate, for respondent
Nos.2 to 4.

**Coram: T.V. NALAWADE &
SANGITRAO S. PATIL, JJ.**

Date: 9 February 2017

ORAL JUDGMENT (Per Sangitrao S. Patil,J.) :

1) Rule, returnable forthwith. With the consent of the learned counsel for the contesting parties heard finally.

2) According to the petitioner she joined as Auxiliary Midwife at Aurangabad in 1983. She was sent for stepladder course training in August 1984 and completed the same in November 1985. As she acquired the requisite qualification by passing that stepladder course, she was posted and joined as A.N.M. On 16-12-1985. She was eligible for gradation after completion of 12 years of service i.e. in the year 1997 and also for second gradation in the year 2009. She was granted the higher pay scale from the year 1985. She retired on 30-9-2014. Her pension papers were

received back by her department with the objection that she has been paid excess amount of salary. The respondent-authority vide letters dated 3-10-2015 and 22-12-2015 directed to recover excess amount paid to her. The petitioner challenges the said letters by filing present petition and further prays for a direction against respondent Nos.2 to 5 to grant her all the retiral benefits.

3) The learned counsel for the petitioner submits that though there is mistake in fixing pay scale of the petitioner, it was not because of any fault on the part of the petitioner or any fraud played by her. Since it was a mistake of the respondent-authority, the amount paid in excess to the petitioner was not liable to be recovered from her in view of the decision of the Apex Court in the case of **State of Punjab v. Rafiq Masih (2015) 4 SCC 334**. He submits that the pay scale of the petitioner could be refixed and she could be granted the pay scale which is

admissible to her and on the basis of the refixed pay scale she could be granted pension as well.

4) The learned counsel for the respondent-authority submits that since excess amount has been paid to the petitioner because of the mistake on the part of the office of the respondent-authority, the said amount is liable to be recovered from her.

5) We considered the case of the petitioner with reference to the judgment cited by the learned counsel for the petitioner wherein it has been held that recovery of the amount paid in excess to the employees without fault of the recipient-employee cannot be recovered in the following circumstances enumerated in paragraph 18 of the judgment.

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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) The petitioner has got retired. She was Class III employee. Excess payment of salary has been made to her because of the fault on the part of the office of the respondent-authority. The said fault is not attributable to the petitioner. In the circumstances, in view of the above cited judgment, the amount that has been paid in excess to the petitioner cannot be recovered.

7) So far as re-fixation of the pay of the petitioner is concerned, there cannot be any dispute that the respondent-authority is entitled to rectify the mistake and re-fix her pay scale. Accordingly, the respondent-authority should re-fix the pay scale of the petitioner and calculate the pension payable to her accordingly. The petitioner is not entitled to claim pension on the basis of the same pay which was earlier wrongly fixed.

8) In the circumstances, we direct the respondent-authority to re-fix the pay and pension of the petitioner as admissible to her within a period of four months from today. However the respondent-authority shall not recover the amount of excess payment that has been made to her. With these directions rule is made absolute accordingly and the writ petition is disposed of. No costs.

Sd/-
(SANGITRAO S. PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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