

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

WRIT PETITION NO.4610 OF 2016

Babruwan s/o. Antoba Lokhande,
Age:65 years, Occ. Pensioner/Retd. Clerk,
r/o. Near New Bus Stand, Georai,
Tq. Georai, Dist. Beed ..Petitioner

Vs.

1. The State of Maharashtra,
through the Accountant Officer,
Office of the Accountant General,
(Accountants and Establishment)-II,
Nagpur – 44001
2. The District Collector,
Beed
3. Tahsildar,
Tahsil Office, Georai,
Tq. Georai, Dist. Beed ..Respondents

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Mr.A.L.Kanade, Advocate for petitioner
Mr.A.R.Borulkar, AGP for respondents

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**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.
DATE : MARCH 08, 2017**

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

Rule, returnable forthwith. Heard finally
with the consent of the learned Counsel for the
contesting parties.

2. The petitioner, who was serving as a Clerk in Tahsil Office at Georai, has sought direction against the respondents restraining them from making recovery of excess payment of pension of Rs.640/- per month from 01.02.2013 to 31.10.2015 from his pension as mentioned in the letter dated 15/17.02.2016 issued by respondent no.1.

3. The learned Counsel for the petitioner submits that the petitioner retired on 30.06.2009 on attaining the age of superannuation. He was a Class-III employee. The excess payment of pension was not made to him because of any fraud played or representation made by him. It was the mistake of the office of respondent no.3, due to which excess payment has been made. He, therefore, submits that in view of the judgment in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) and ors., (2015)4 SCC 334** and the judgment of this Court in the case of **Sumangala d/o.**

Meghashyam Palsikar Vs. The State of Maharashtra and ors. (Writ Petition No.1941 of 2016) decided on 09.02.2017, excess payment of pension cannot be recovered from the petitioner.

4. On the other hand, the learned AGP relying on the reply filed on behalf of respondent nos.2 and 3 and particularly, Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982 ("the Rules", for short), submits that the respondents are empowered to recover from the petitioner the excess amount paid to him due to any reason whatsoever during the period of his service or after retirement. He submits that the excess amount of pension of Rs.640/- per month has been paid to the petitioner from 01.02.2013 to 31.10.2015, which is liable to be recovered from him.

5. We are not inclined to accept the contentions of the learned AGP. The petitioner was

a Class-III employee. After his retirement, his income certainly must have reduced to a considerable extent. If the amount of excess payment of pension made to him is ordered to be recovered at this stage, it would certainly put to him to a great hardship. In the case of **State of Punjab and others (supra)**, in paragraph 18, it is observed as under :

12. 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 herein-above, 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."

In view of the circumstances referred to above and particularly, the circumstances referred to in Clauses (i) and (ii), the amount of excess payment of pension made to the petitioner cannot be allowed to be recovered since such recovery would be iniquitous, arbitrary and in violation of Article 14 of the Constitution of India. Consequently, Rule 134-A of the Rules, in the facts of the present case, would not come in the aid of the respondents in getting the excess payment of pension recovered from the petitioner.

6. In the result, we pass the following order :-

(i) The Writ Petition is allowed.

(ii) The respondents are directed not to recover the excess payment of pension from the petitioner.

(iii) The respondents would be at liberty to re-fix the pension of the petitioner according to law.

(iv) Rule is made absolute in the above terms.

(v) Writ Petition is disposed of.
No costs.

Sd/-
[SANGITRAO S. PATIL, J.]

Sd/-
[T.V. NALAWADE, J.]