

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

BENCH AT AURANGABAD.

WRIT PETITION NO.4713 OF 2016

The State of Maharashtra
and others. ... Petitioners.

Versus

Prabhakar Sadashivrao Jagtap ... Respondent.

...
Mr.M.M.Nerlikar, A.G.P. for the Petitioners.
Mr.S.V.Kshirsagar, advocate advocate holding for
Mr.Ajay Deshpande, advocate for the Respondent.
...

**CORAM : S.V.GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

Date : 08.08.2017.

PER COURT :

1. The present Respondent had moved the Maharashtra Administrative Tribunal, Bench at Aurangabad, against the present petitioners challenging the order dated 28.5.2015 of the petitioners claiming recovery of an amount of Rs.1,76,644/- (Rupees one lac seventy six thousand six hundred forty four) on the ground that the same has been paid in excess. Out of

the said amount, the amount of Rs.6,000/- (Rupees six thousand) is by way of fine. The Respondent has retired from service and from the retiral benefit, the same was sought to be recovered.

2. Mr.Nerlikar, learned A.G.P. submits that over payment was noticed when Pay Verification unit verified the account and the service book of the Respondent. The Respondent is unjustly enriched. The provisions of Maharashtra Civil Services (Pension) Rules permits recovery to be made.

3. We have heard learned counsel for the Respondent.

4. The over-payment is claimed to have been from the year 1987. The Respondent stood retired in the year 2013 on attaining the age of superannuation and the order claiming recovery is issued on 28.5.2015.

5. It is not the case that the present Respondent has misrepresented and the over

payment is on account of misrepresentation on the part of the Respondent. It is also not the case of the present petitioners that Respondent had at any material point of time given an undertaking to repay the amount if the calculation is erroneous. Naturally, hardship would be caused to the Respondent if from the pension the same is sought to be recovered. The judgment of the Apex Court in the case of **"State of Punjab and others etc. Vs. Rafiq Masih (WhiteWasher) etc."** reported in **AIR 2015 Supreme Court 696**, would apply. The Tribunal has rightly considered the said aspect.

6. In view of that, the Writ Petition is dismissed. No costs.

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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