

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

WRIT PETITION NO. 5558 OF 2007

**THE STATE OF MAH AND ORS
VERSUS
SHAHURAO BABURAO AUSARMAL**

**...
AGP for Petitioner : Mr.R.V.Dasalkar
Adv for Respondents: Mr.R.V.Gore**

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

DATE : 09/08/2017

PER COURT :-

The present respondent was appointed on 25/11/1967 as a Junior Surveyor Assistant in Class-III cadre. He was given time-bound promotion w.e.f. 1/10/1994. By an order dated 12/09/2002, pay scale of the applicant was enhanced to Rs.4000-6000 w.e.f. 1996. On or about 03/09/2005, the Executive Engineer, Irrigation Research Division, reduced his pay scale and excess amount was sought to be recovered approximately to the tune of Rs.85010/-. The respondent assailed said order before the Tribunal. The Maharashtra Administrative Tribunal quashed the order seeking recovery against the petitioner. Aggrieved thereby the State is before this Court.

2] The learned AGP states that due to wrong calculation, the impugned pay scale was given to the respondent, to which the respondent was not entitled. In the order, giving him the benefit of the revised pay scale, it was clearly stated that if the pay verification unit finds the pay fixation to be erroneous, then the excess amount paid, would be recovered in one installment. Respondent was put to notice of the said fact. In view of that the Tribunal ought not to have passed the impugned order.

3] Mr.Gore, learned counsel supports the order and suggests that after retirement of the respondent, the recovery was sought to be claimed. The learned counsel relies on the judgment of the Apex Court in the case of **State of Punjab and others V/s Rafiq Masih (White Washer) etc. reported in 2015 (4) SCC 334.**

4] We have considered the submissions. The benefit of the impugned pay scale was given to the respondent w.e.f. 1996, the same was modified under order dated 03/09/2005 and recovery was sought to be claimed under letter dated 01/12/2005. The petitioner on attaining age of superannuation, already stood retired on 30/04/2004. The respondent was working in Class-III cadre, is undisputed fact.

5] The Apex Court in the case of **Rafiq Masih** referred supra has laid down the following guidelines :

“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 employees belonging to Class-III and Class-IV service (or Group C and Group D service).

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

(iii) Recovery from 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 employers right to recover.”

6] In the present matter, the respondent had never given any undertaking that he would repay the amount, if it is found that the pay fixation is erroneous. It is also not the case of the petitioner that the

pay fixation was done upon the misrepresentation of the respondent. Further the recovery is sought to be claimed after retirement of the respondent.

7] In view of the aforesaid circumstances, the judgment of the Apex Court in case of Rafiq referred supra would squarely apply.

8] In light of the above, the Tribunal has not committed any error in passing the impugned order. Writ Petition as such is dismissed. Rule discharged. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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