

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

WRIT PETITION NO. 6397 OF 2005

Shri. Ram S/o Sukhdeo Kamble,
Age : 48 years, Occ. Service,
R/o. Vidya Nagar, Sailu,
Tq. Sailu, Dist. Parbhani ...Petitioner

VERSUS

1. The State of Maharashtra,
2. The Director,
Municipal Administration,
Government Transport Service
Building, 3rd Floor,
Sir Pokharanwala Road,
Worli, Mumbai- 400 030.
3. Chief Officer,
Municipal Council,
Sailu, Tq. Sailu,
Dist. Parbhani.
4. Collector,
Parbhani ..Respondents

AND

WRIT PETITION NO. 6398 OF 2005

Shri. Ashok S/o Manikrao Kasar,
Age : 46 years, Occ. Service,
R/o. Hemant Nagar, Sailu,
Tq. Sailu, Dist. Parbhani. ..Petitioner

VERSUS

W.P.. 6398 of 2005

1. The State of Maharashtra,
 2. The Director,
Municipal Administration,
Government Transport Service
Building, 3rd Floor,
Sir Pokharanwala Road,
Worli, Mumbai- 400 030.
 3. Chief Officer,
Municipal Council,
Sailu, Tq. Sailu,
Dist. Parbhani.
 4. Collector,
Parbhani
- ..Respondents

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Shri.A.S.Deshmukh, Advocate for petitioners

Shri.S.K.Tambe, A.G.P for respondent Nos.1,2, and 4

Shri.Ashok Bhagure, Advocate for respondent No.3

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**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL JJ.
DATE : SEPTEMBER 13, 2017**

COMMON JUDGMENT (PER SANGITRAO S. PATIL, J.):

Heard the learned Counsel for the petitioners, the learned A.G.P representing the State and the learned counsel for respondent No.3.

2. Since common questions of law and facts are involved in these petitions, they are being decided by this common judgment.

3. The petitioners were serving as Recovery Clerks in Municipal Council, Sailu, Tq. Sailu, Dist. Parbhani. As per the recommendations of 4th Pay Commission, they were given pay-scale of Rs.1400-2600 vide order dated 01.10.1997. However, the said order was reviewed by respondent No.2 as per the order dated 09.03.2005 and instead of the pay scale of Rs.1400-2600, their pay scale was fixed at Rs.1200-2040. Further, respondent No.2 directed recovery of the excess amount paid to the petitioners on account of wrong pay fixation.

4. The learned Counsel for the petitioners submits that the petitioners are class-III employees of the Municipal Council. One of the petitioners has retired on attaining the age of superannuation and another is on the verge of retirement. He submits

that the petitioners were rightly given the pay-scale of Rs.1400-2600 as per the order dated 01.10.1997 passed by respondent no.2. He submits that even if it is accepted, for a while, that there was mistake in fixation of pay-scale of the petitioners, it was on the part of the office of the petitioners. The said mistake was not the result of any fraud or misrepresentation on the part of the petitioners. If the excess amount is ordered to be recovered from the petitioners, they will be put to a great harassment. The learned Counsel submits that in view of the judgment in the case of ***State of Punjab and others etc Vs. Rafiq Masih (White Washer) etc. AIR 2015 S.C. 696***, the amount of excess payment made due to wrong fixation of pay of the petitioners cannot be recovered from them since they are Class III employees and one of them has been retired, while the other is on the verge of retirement.

5. The learned AGP submits that since the pay-scale of the petitioners was wrongly fixed, after

noticing the mistake, it was decided to recover the amount of excess payment already made to them. He submits that the respondents are entitled to recover the amount of excess payment made to the petitioners on account of wrong fixation of pay.

6. It is not the case the respondents that the pay scale of the petitioners was wrongly fixed at Rs.1400-2600 because of any misrepresentation or fraud played by them. There is nothing on record to show that the petitioners had knowledge that they were being paid excess pay, to which they were not legitimately entitled. The petitioners cannot be held responsible for the excess payment made to them on account of wrong pay fixation. In the circumstances, the law laid down by the Hon'ble Apex Court in the case of **State of Punjab and others** (supra) cited by the learned counsel for the petitioners, would be applicable to the facts of the present case. In the said judgment, the Hon'ble Apex Court has summarized

some of the situations when recovery by the employer would be impermissible in law. They are as under :-

(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.

7. The petitioners are class-III employees. One of the petitioners has retired on attaining the age of superannuation and another is on the verge of the retirement. As per the impugned order dated 09.03.2005, the amount of excess payment made to the petitioners from the year 1997 (i.e. for a period of more than five years) has been sought to be recovered. Considering the status and income of the petitioners, it would be iniquitous and harsh to recover the amount of excess payment made to them at this stage. The case of the petitioners would fall in Clauses (i),(ii), (iii) and (v) referred to above. In the circumstances, the impugned order, dated 9th March, 2005 to the extent it directs recovery of

excess payment made to the petitioners, being not sustainable, will have to be quashed and set aside. As a consequence thereof, the order dated 05.04.2005 passed by Respondent No.3 to the extent it directs recovery of excess payment made to the petitioners also will have to be quashed and set aside. In the result, we pass the following order :-

O R D E R

- (i) The orders dated 09th March, 2005 and 05th April, 2005 passed by respondent Nos.2 and 3 respectively, to the extent they direct recovery of excess payment made to the petitioners, are quashed and set aside.
- (ii) Rule is made absolute accordingly.
- (iii) Writ Petitions are disposed of.
- (iv) No costs.

(SANGITRAO S. PATIL)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE