

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

WRIT PETITION NO. 5367 OF 2016

Ravindra s/o Ramchandra Patil,
Age 62 years, Occu. Retired A.S.I.,
R/o 5/56-K, Khotenagar, Jalgaon

.. Petitioner

Versus

1. The State of Maharashtra,
through its Secretary,
Home Department, Mantralaya,
Mumbai - 32
2. Director General of Police,
Maharashtra State, Mumbai
3. Inspector General of Police,
Nasik Region, Nasik
4. District Superintendent of Police,
Jalgaon
5. Principal Accountant General
(A & E), Maharashtra, Mumbai-20 .. Respondents

Mr P.B. Patil, Advocate for petitioner
Mr V.S. Badakh, A.G.P. for respondents no.1 to 4
Respondent no.5 served

**CORAM : R.M. BORDE AND
A.M. DHAVALA, JJ**

DATE : 18th July 2017

ORAL JUDGMENT (Per R.M. Borde, J.)

1. Rule. Rule returnable forthwith. With the consent of parties, petition is taken up for final disposal at admission stage.
2. The petitioner is objecting to the order dated 12th January 2012 directing recovery of amount of Rs.1,02,554/-, allegedly paid to the petitioner in excess of his entitlement together with interest at the rate of 18% per annum. The petitioner contends that since the

amount has already been recovered out of the gratuity amount, the respondents be directed to refund the amount of Rs.1,02,554/- to the petitioner along with interest at the rate of 18% per annum from the date of deduction till realisation of amount.

3. The petitioner was in employment as Assistant P.S.I. in the Police department at the time of his retirement. The petitioner retired on attaining age of superannuation on 31st May 2012. It is the contention of the petitioner that initial pay fixed by the respondents at the time of his induction in employment, on 1st January 1986 has been directed to be revised by an order issued on 29th December 2003. It was also directed in the said order that the excess amount paid to the petitioner as a result of wrong fixation of pay since 1st January 1986 shall be recovered. The order passed by the respondent on 29th December 2003 was recalled in view of the subsequent order issued on 29th November 2005. It was also directed that the amount recovered from the salary payable to the petitioner as a result of the order issued in the year 2003 shall be repaid to him. A separate order directing the repayment of amount of Rs.7,000/- recovered from the monthly salary of the petitioner was issued on 2nd May 2006. In view of the impugned order passed on 12th January 2012, the respondent again directed to revise pay fixed w.e.f. 1st January 1986 and the respondent, by virtue of order dated 12th January 2012, virtually reverted back to the position existing on the date of issuance of the first order dated 29th December 2003. The pay of the petitioner was fixed on 1st February 1987 at Rs.1,070/- instead of Rs.1,130/-. The position appearing prior to the order issued on 29th December 2003

was reversed in view of the order dated 29th November 2005, which has again been rolled reverted back to the initial position by virtue of the order issued in 2003. The respondents, it appears are shifting stand from time to time in respect of entitlement of the petitioner to receive the salary w.e.f. 1st January 1986. It must be noted that the petitioner was in fact due to retire within few months on the date of issuance of the adverse order dated 12th January 2012 and has actually retired on attaining age of superannuation on 31st May 2012. By virtue of the order passed on 12th January 2012, recovery of alleged excess amount paid to the petitioner to the tune of Rs.1,02,554/- has been made out of the amount of gratuity. It is impermissible to direct revision of the pay-scale and recovery of amount allegedly paid in excess of the entitlement to the petitioner, who is Group 'C' employee while he was on the verge of retirement. The principle laid down by the Apex Court in the matter of **State Of Punjab & Ors vs Rafiq Masih (White Washer)** reported in **2015 (4) SCC 334** squarely applies to the instant matter. In the reported matter, Supreme Court has laid down the guidelines in respect of recovery of the amount from the employee and has serialised the situation whereunder it would be impermissible in law to recover the amount. It is laid down by the Supreme Court that in following circumstances, it would be impermissible for the employer to recover the amount from the employee:

- (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 employer's right to recover.

4. Considering the facts and circumstances of this case, we are of the opinion that the case of the petitioner is covered by clauses (i), (ii) (iii) and (v) as recorded above in the judgment of **State Of Punjab & Ors vs Rafiq Masih** (cited supra). The petitioner is Group 'C' employee and at the time of issuance of the order directing recovery, he was due to retire within a period of few months and that the excess amount that has been directed to be recovered, was paid to him during the period in excess of five years prior to the issuance of order of recovery.

5. It is contended on behalf of respondents that in the year 2009, the petitioner had given an undertaking to the effect that the excess amount paid to him could be recovered from the monthly salary payable to him.

6. It must be noted that the petitioner was paid alleged excess amount from 1986 onwards and the order directing recovery issued for the first time in 2003 was recalled in 2005 and the excess amount allegedly paid to the petitioner, which was directed to be recovered by virtue of order passed in 2003, was also recovered from him in the year 2006. The alleged so called undertaking recorded in the year 2009 has, in fact, no relation with the orders passed in the instant matter regarding re-fixation of pay of the petitioner and the order of recovery, which was recalled in the year 2005 by the respondent. The contentions raised in the affidavit-in-reply are quite misleading and do not reflect the real facts. Reliance is also placed on the judgment delivered by the Supreme Court in the matter of **High Court of Punjab and Haryana and ors. Vs. Jagdev Singh**, reported in **(2016) 14 SCC 267**. In the reported matter, there was admittedly undertaking furnished by the Judicial Officer while opting for revised pay-scale that he would refund the excess amount paid and thus, was held bound by the undertaking. The reported matter relates to revision of the pay-scale and the option was exercised by the Judicial Officer in favour of the revised pay-scale proposed by the respondent and there was also undertaking recorded by the employee in favour of the State. In the instant matter, firstly, the distinguishing feature is that the Judicial Officer who had approached, Supreme Court cannot be said to be Group 'C' employee and as such, principle laid down in the matter of High Court of Punjab & Haryana (cited supra) is not applicable in the instant case. The instant case is squarely covered by the judgment in the matter of State of Punjab (cited supra). The

decision on which reliance is placed by the respondents is wholly inapplicable.

7. It also must be noted that recovery of the amount from the gratuity receivable by the petitioner is also illegal and impermissible.

8. For the reasons recorded above, the writ petition deserves to be allowed and same is accordingly allowed.

9. Respondents are directed to refund the amount of Rs.1,02,554/- recovered from the gratuity amount paid to the petitioner, together with interest at the rate of 10% per annum from the date of recovery till realisation, as expeditiously as possible, preferably within six months from today.

10. Rule is made absolute to the extent specified above. There shall be no order as to costs.

(A.M. DHAVAL, J.)

(R.M. BORDE, J.)

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