

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

BENCH AT AURANGABAD.

WRIT PETITION NO.12361 OF 2016

Damodhar S/o Bajrang Chandge ... Petitioner.

Versus

The State of Maharashtra
and another. ... Respondents.

...
Mr.S.K.Patil, advocate for the petitioner.
Mr.P.S.Patil, Additional Government Pleader for
the State.
Mr.S.V.Mundhe, advocate for Respondent No.2.
...

**CORAM : S.V.GANGAPURWALA AND
S.M.GAVHANE, JJ.**

Date : 27.11.2017.

PER COURT :

1. The petitioner seeks refund of Rs.37,898/- (Rupees thirty seven thousand eight hundred ninety eight only) along with interest.

2. The petitioner was serving and retired as gangman on 31.5.2015. From his gratuity and pensionary benefits, an amount of Rs.37,898/-

(Rupees thirty seven thousand eight hundred ninety eight only) is recovered.

3. It is the contention of the petitioner that the arrears sought to be recovered were for a period 2001-2005 i.e. on account of excess payment made on the basis of 5th Pay Commission. According to the petitioner the recovery caused extensive hardship to the petitioner.

4. Mr.Mundhe, learned counsel for the Respondent submits that in case excess payment is made on account of wrong pay fixation then the same is recoverable from pensionary benefits in view of Rule 131 and 132 of the Maharashtra Civil Services (Pension) Rules, 1982. The petitioner has also given his undertaking that if any excess amount is paid on account of wrong pay fixation, the same can be recovered. In view of that the excess payment has been rightly recovered.

5. The Apex Court in a case of **"State of Punjab and others etc. Vs. Rafiq Masih (Whitewasher) etc."** reported in **AIR 2015 Supreme**

Court 696, has laid down following principles :

"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 hereinabove, 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 employer's right to recover."

6. The petitioner admittedly was a class IV employee. He has retired from service.

Recovery is claimed from retiral benefits. The recovery is for the period from 2001-2005 i.e. the excess payment made in excess of 10 years before the order of recovery. The recovery certainly caused hardship to the petitioner. All these criterias are in favour of the petitioner.

7. In light of the above, we quash and set aside the recovery. The Respondent shall refund an amount of Rs.37,898/- (Rupees thirty seven thousand eight hundred ninety eight only) to the petitioner expeditiously, preferably within three (3) months.

8. The prayer for interest is rejected as it is not an amount which is erroneously deducted. It was an excess amount paid to the petitioner. It is only on the ground of equity, we have exercised our jurisdiction.

9. The Writ Petition is allowed in above terms. No costs.

(S.M.GAVHANE, J.)

(S.V.GANGAPURWALA, J.)

asp/office/wp12361.16

