

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

WRIT PETITION NO. 12622 OF 2016

Sangita Bhagwan Joshi

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respondents

Mr.Girish S. Rane, Advocate for the petitioner.

Mr.K.D. Munde, A.G.P. for respondent/State.

Mr.D.P. Bakshi, Advocate for respondent Nos.2 and 3.

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

DATED : 03.10.2017

P.C. :-

1. Mr. Rane, learned Counsel submits that the husband of the petitioner retired on 31.03.2015. At the time of retirement, he was working as Senior Clerk, holding Class-III post. Subsequently, he died on 15.10.2015. The respondent, thereafter, passed order of recovery on 14.10.2016 on the ground that by oversight and mistake, they have wrongly given deemed date to the petitioner. Learned Counsel submits that the recovery could not have been made subsequently. Learned Counsel relies on the judgment of Apex Court in the case of State

of Punjab and Ors. Vs. Rafiq Masih (White Washer) etc.
AIR 2015 S.C.696.

2. Mr. Bakshi, learned Counsel for respondent Nos.2 and 3 submits that by mistake the deemed date for the post of Senior clerk was given as 10.05.1980. Actually, it ought to have been given as 12.04.1989. Because of this wrong deemed date, excess payment was made to Late Bhagwan Wedu Joshi. Same is recoverable as per the Manual and Government Notification.

3. We have considered the submissions.

4. The deceased husband of the petitioner was working on Class III post. The respondents in the affidavit have accepted that it was because of mistake and inadvertence on the part of the respondents the deemed date as Senior Clerk was given to the deceased husband of the petitioner as 10.05.1980 instead of 12.04.1989. The husband of the petitioner stood retired

on 31.03.2015. He eventually died on 15.10.2015. The recovery is sought to be claimed under order dated 14.10.2016, after the death of the deceased.

5. The Apex Court in the case of **Punjab and Ors. Vs. Rafiq Masih (White Washer) etc.**, referred to above, 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 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 employer's right to recover."

6. The case of the petitioner is completely covered by the principles laid down by the Apex Court in the aforementioned case. Considering the above, the order dated 14.10.2016 and 26.10.2016 claiming recovery against the petitioner to that extent is quashed and set aside. The respondents shall not claim any recovery from the petitioner for the amount which is already paid to the petitioner or the deceased husband. The pensionary/retiral benefits shall not be withheld.

7. The writ petition is accordingly allowed. No costs.

[S.M.GAVHANE, J.]

[S.V.GANGAPURWALA, J.]