

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9141 OF 2015

Anant Yashwant Rajwade and Others ...Petitioners
vs.
State of Maharashtra and Others ...Respondents

Mr. J.G. Reddy, for the Petitioners
Mrs. R.M. Shinde, AGP for the Respondent-State.

**CORAM : SHANTANU S. KEMKAR &
M. S. SONAK, JJ.**

DATE : JULY 25, 2017

P.C.:

. Challenging the letter/communication dated 5th February, 2007, 20th March, 2015 and 6th April, 2015 issued by the Respondent No. 1 to Respondent No. 3 in respect of recovery from the pensions of Petitioners and stoppage of benefits of time bound promotion/ Assured Career Progression scheme granted to the Petitioners on 14th October, 1988 on the ground that the payment has made in excess and is contrary to the policy, the Petitioners have filed this Petition.

2. According to the Petitioners the impugned communications are made on the basis of letters issued by the

State Government on 6th April, 2015 (Exhibit “N”). There is no dispute to the fact that these recoveries are being initiated much after the retirement of the Petitioners. It is also not in dispute that there is no fault on the part of the Petitioners and no fraud or misrepresentation had been alleged against the Petitioners by the Respondents for getting the aforesaid payment.

3. In the circumstances, when there was no fault, misrepresentation or any fraud on the part of the Petitioners, the impugned recovery which has been initiated much after the retirement of the Petitioners cannot be sustained. Admittedly the Petitioners are Class III and IV employees, therefore in the impugned recovery cannot be sustained. The Supreme Court in paragraph No. 18 in the case of “**State of Punjab and Ors. vs.**

Rafiq Masih (White Washer) and Ors.”¹ has held as under:

“18. 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

¹ (2015) 4 Supreme Court Cases 334

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. In view of the aforesaid, the impugned recovery is unsustainable. As a result, we allow the Writ Petition and quash the impugned recovery orders dated 5th February, 2007, 20th March, 2015 and 6th April, 2015.

5. Accordingly, the Petition is allowed in terms of the prayer clause (b) and (c).

(M. S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)