

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 789 OF 2018

The State of Maharashtra and others.. **Petitioners**
Versus
Devidas Vishnupant Salgarkar .. **Respondent**

Mr. S. P. Sonpawale, A.G.P. for the Petitioners.
Mr. Ajay S. Deshpande, Advocate for Respondent /
Sole.

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

DATE: 25th September, 2018

PER COURT :

1. The respondent had filed Original Application against the amount of recovery claimed by the petitioners. The Original Application is allowed. Aggrieved thereby the State has filed the present petition.

2. Mr. Sonpawale, the learned Assistant Government Pleader submits that the respondent was working as a Junior Engineer. He was granted Ad-hoc promotion as a Sub Divisional Engineer and his pay was fixed as a Sub Divisional Engineer

which is erroneous. In view of that, recovery is claimed. The recovery claimed is legal and proper. The respondent cannot be allowed to retain the amount paid excess. As per Rule 132 (1), (2) and (3) of the Maharashtra Civil Services (Pension) Rules, 1982 the amount paid in excess can be recovered from the amount of gratuity payable and credited to the Government head of the account. The learned A.G.P. submits that the tribunal did not consider the said aspect.

3. Mr. Deshpande, the learned counsel for the respondent submits that the Court has rightly considered the judgment of the Apex Court in a case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** reported in **(2015) 4 Supreme Court Cases 334**. The recovery is claimed in respect of the amount paid in excess for the year 1998 to 2005 of Rs.65,330/- and an amount of Rs. 55,338/- paid during 01.02.2006 till 31.05.2012. The same is not permissible. The learned counsel relies on the judgment of the Apex

Court in a case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** (*supra*).

4. We have considered the submissions canvassed by the learned counsel for the respective parties.

5. The respondent was substantively working on Class – III post. He was granted Ad hoc promotion on the post of Sub Divisional Engineer and his pay was fixed as that of Sub Divisional Engineer which the respondent it appears was not entitled to.

6. Be that as it may, the pay fixation was initially done in the year 1998 – 2005. The respondent stood retired on attaining the age of superannuation in the month of May – 2012.

7. The Apex Court in a case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** (*supra*) has laid down five principles, the same 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.'

8. The respondent was substantively working on Class – III post. It would tantamount to hardship if the amount is sought to be recovered from the respondent.

9. Considering all the aforesaid aspects, the tribunal has not committed any error in passing the impugned order.

10. The tribunal had directed the present petitioners to pay the amount of Rs. 1,20,668/-

within a period of six months from the date of the order failing which the present petitioners would be liable to pay the interest at the rate of 12% per annum from the date of the order till the refund. This Court had granted Ad-interim relief earlier.

11. Considering the above, the present petitioners shall pay an amount of Rs. 1,20,668/- within a period of four months from today. If the amount is paid within a period of four months, the present petitioners shall not be liable to pay the interest.

12. Writ Petition accordingly stands disposed of.
No costs.

[S. M. GAVHANE, J.] [S. V. GANGAPURWALA, J.]

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