

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1124 OF 2016
WITH
CIVIL APPLICATION (ST) NO.28001 OF 2018

JAGDISHCHANDRA SHANKARLAL SHARMA AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHERS

Mr. R.R.Mandir, Advocate for the petitioners
Mrs.M.A.Deshpande, AGP for the respondent/State
Mr.D.S.Bagul, Advocate for respondent No.2.

CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.
DATED : 11.09.2018

P.C. :-

Mr.Mantri, learned counsel for the petitioners submits that all these petitioners were working on Class-III, Class-IV post with respondent No.2 Municipal Corporation. All these petitioners have retired long back. After their retirement the recovery is sought to be claimed from the petitioners under notices dated 26.10.2015 and 27.10.2015 on the ground of wrong pay fixation. Learned counsel submits that the petitioners have not misrepresented while fixing their pay. Respondent No.2 on its own volition fixed the pay scale of the petitioners. According to the learned counsel, hardship would be caused if recovery is claimed at this stage from the pension amount. The learned counsel relied upon judgment of the Apex Court in case of State of Punjab Versus Rafiq Masih (White Washer) reported in 2014, SCC 883.

2. Mr.Bagul, the learned counsel for respondent

No.2 submits that under erroneous pay fixation the petitioners were benefited with the excess amount. If petitioners are allowed to retain amount, it would amount to unjust enrichment. According to the learned counsel, as per the audit report the petitioners have been paid excess amount as such the respondents are entitled for the recovery of the same.

3. We have considered the submissions. It is not disputed that all these petitioners were Class-III and Class-IV employees. The petitioners have retired from service. After retirement, recovery is claimed from them. The recovery is claimed beyond five years of the benefit given to them. It would result in to hardship if recovery is directed at this stage from pensionary amount.

4. The Apex Court in the case of State of Punjab Versus Rafiq Masih (Supra) has laid down the 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 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 employers right to recover."

5. The case of the petitioners comes within parameters laid down by the Apex Court in the case of State of Punjab (Supra).

6. In light of the above the recovery claimed against the petitioners by impugned notices are quashed and set aside. The respondent shall release the benefits of 5th and 6th pay commission if the same is admissible to the petitioners expeditiously preferably within four months. Accordingly the Writ Petition is allowed. No costs.

7. Petitioner No.2 is dead. Leave to bring on record the legal heirs of petitioner No.2. Civil Application (St) No. 28001 of 2018 is allowed in terms of prayer clause B and C.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]