

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 8130 OF 2013

Sushilabai w/o. Madhukar Patil,
Age 60 years, Occu. Household,
R/o. Kauthal, Tq. and Dist. Dhule.

....Petitioner.

Versus

1. The State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Office of Chief Accounts
And Finance Officer, Zilla Parishad
Dhule, Tq. and Dist. Dhule.
3. The Education Officer (Primary),
Zilla Parishad, Dhule,
Tq. and Dist. Dhule.
4. The Block Education Officer,
Panchayat Samiti, Dhule,
Tq. and Dist. Dhule.
5. The Block Development Officer,
Panchayat Samiti Dhule,
Dist. Dhule.

....Respondents.

Mr. Vinod P. Patil, Advocate for petitioner.

Mr. R.V. Dasalkar, AGP for respondent No. 1/State.

Mr. R.S. Pawar, Advocate for respondent Nos. 3 & 4.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : FEBRUARY 28, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) Rule. Rule made returnable forthwith. By consent, heard

both the sides for final disposal.

2) The petition is filed under Articles 226 and 21 of Constitution of India for giving direction to the respondent Zilla Parishad, employer of the husband of the petitioner to refund the amount already recovered from the petitioner which was mentioned in the communication dated 3.10.2012 and relief is claimed for quashing and setting aside the said communication also.

3) The husband of the petitioner was working as Assistant Teacher with respondent and he died on 1.9.1995. The petitioner was entitled to get family pension and family pension was also sanctioned to the petitioner by order dated 5.8.1996. Then from October 2012, the petitioner found that from the pension amount, some amount was being deducted. On inquiry, she learnt that order was made on 25.7.2012 that mistake was committed in fixing the pension amount on the basis of revision of pay scale which was done on the basis of reports of 5th Pay Commission and 6th Pay Commission. The respondent found that the amount of Rs. 2,28,457/- was paid in excess and the respondent directed to make deductions at the rate of Rs.2500/- p.m. Some amount was to be deducted from the arrear amount which was to be paid after implementation of 6th Pay Commission's Report. On the date of

petition, the amount of Rs.68,138/- was already recovered and the respondent wanted to recover amount of Rs. 1,60,320/- more.

4) The learned counsel for petitioner placed reliance on the observations made by the Apex Court in the case reported as **(2015) 4 SCC 334 [State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors.]**. The Apex Court has laid down that in Service Law when excess amount is paid without fault of recipient, there will be hardship caused to the employee in case the recovery is directed and so, recovery in such case is impermissible. The instances in which recovery is not permissible is quoted by the Apex Court. One category in which recovery cannot be allowed is the category when there was no fault of employee and allowing recovery would amount harsh step against the employee and such recovery from employee belonging to Class III and Class IV is not permissible. This Court has taken decisions on the basis of similar decisions of Apex Court in many matters and this Court has not allowed departments to make recovery under such circumstances. The learned counsel for petitioner placed reliance on those decisions and copies are produced on record.

5) On the other hand, the learned counsel for respondent placed reliance on observations made by the Apex Court in the case

reported as **AIR 2016 SC 3523 [High Court of Punjab and Haryana Vs. Jagdev Singh]**. In that case, the person involved was from judicial service and further, undertaking was given by him to refund any excess amount paid to him. In view of the facts of the present matter, this Court holds that it will be very harsh if the respondents are allowed to recover the aforesaid amount which is paid without there being any mistake on the part of petitioner. She is widow, who has crossed the age of 60 years and it is the matter of family pension. In the result, following order is made :-

ORDER

The petition is allowed. The order of recovery which is under challenge is hereby quashed and set aside. However, this decision will be operative in respect of future recovery and the respondents are hereby prevented from recovering the remaining amount which is mentioned in the notice dated 3.10.2012.

Rule is made absolute in aforesaid terms.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/