

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

6 WRIT PETITION NO.3649 OF 2016

SHIVAJI CHATRABHUJ WAGHMARE

..PETITIONER

VERSUS

THE CHIEF EXECUTIVE OFFICER ZP BEED
AND ANOTHER

..RESPONDENTS

...

Mr. Dnyaneshwar R. Kale Patil, Advocate for the
Petitioner.

Mr. Vilas P. Savant, Advocate for the Respondent
Nos.1 and 2.

...

**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATED : 11th DECEMBER, 2018.

PER COURT:-

1. Mr. Kale, learned counsel for the petitioner submits that the pay fixation and the increments that were given from 01.01.2008 to 31.07.2015 is recalled and recovery is claimed under the impugned order dated 15.10.2015. 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** reported in **2015 (4) Supreme Court Cases 334**.

2. The learned counsel submits that the petitioner is dead and is represented by Legal Heirs. The recovery also cannot be claimed for a period prior to five year. No misrepresentation was made by the deceased petitioner at any material point of time.

3. Mr. Savant, learned counsel for respondents submits that the petitioner was supposed to complete MS-CIT within a stipulated period. The said period was also finally extended upto 31.12.2007. However, the petitioner did not complete the same. In view of that increments granted from 1.1.2008 to 31.07.2015 have been rightly recalled. The deceased-petitioner is liable for the same.

4. The case of the deceased-petitioner does not come within the ambit and purview of wrong pay fixation. The increments were granted to the deceased-petitioner on the ground that the deceased-petitioner shall complete MS-CIT within the stipulated period. The deceased-petitioner failed to complete the same. In view of that, the respondents were within their powers to withdraw the benefit given to the petitioner.

5. However, it would appear that the employee is dead and is now represented by the L.Rs.. It is only on the ground that deceased employee is dead and it would be inequitable to recover the amount from the L.Rs., we have entertained the petition.

6. Considering the facts that hardship would be caused, if the recovery is made from the L.Rs of the deceased employee. The L.Rs. are the widow doing household work, one son doing labour, another son taking education and the daughter is married

much earlier. Only on the ground of equity and facts and circumstances of this case, we have entertained the petition.

7. In the result, the impugned order to the extent of recovery only is quashed and set aside. The amount of recovery as claimed under the impugned order shall not be withheld. However, pay fixation will be done considering the order that the deceased employee had not completed MS-CIT within a stipulated period.

8. Writ Petition is disposed of. No costs.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE