

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

WRIT PETITION NO.5445 OF 2017

Shaikh Mahammad Shaikh Abdulla ...Petitioner

Versus

The State of Maharashtra and Ors. ...Respondents

Mr.S.P.Salgar, Advocate for Petitioner
Mr.P.S.Patil, A.G.P. for Respondent No. 1
Respondent Nos. 2 to 5 served

**CORAM : S.V.GANGAPURWALA AND
A.M.DHAVAL, JJ.**

DATE: APRIL 26, 2018

PER COURT :

1. The petitioner challenges the recovery claimed by the respondent on account of refixation of the salary done by the respondent. Mr.Salgar, the learned counsel for the petitioner submits that the petitioner on the date of his retirement was working as a Tracer. He was Group-'C' employee. The refixation has been done under the order dated 28th March, 2013 and the salary of the petitioner is refixed from 1st January, 2006 and on account of that, the recovery is claimed of Rs. 1,14,396/-. The learned counsel submits that the petitioner has already retired. The petitioner has not misrepresented any time to the respondent. The respondent had fixed the salary of the

petitioner and pursuant to the fixation of the salary done, the salary was paid to the petitioner. The learned counsel relied on the Judgment of the Apex Court in the case of ***State of Punjab Vs. Rafiq Masih*** reported in ***2015 AIR SCW 501***.

2. The learned A.G.P. submits that the Auditor raised an objection on 14.03.2013 about the pay fixation done and in view of the objection, the pay was refixed from 01.01.2006. According to the learned counsel, as excess amount was paid, the recovery is claimed.

3. The petitioner in the present writ petition, is not challenging the order of re-pay fixation done. As such, we do not enter into the merits of the same.

4. The petitioner is challenging the recovery made. Under the impugned order, the re-pay fixation has been done since the inception.

5. On account of the repay fixation done, the recovery is claimed. In fact, it is not the case of the respondent that the petitioner at any time misrepresented the respondent. The petitioner on 13th April, 2013, stood retired and just one month prior to his retirement, the repay fixation is done and

recovery claimed. The Apex Court in the case of *Rafiq Masih* referred to (supra) has held that in case the employee is not the cause for wrong pay fixation and such an employee is working in the Group 'C' or 'D' and/or is at the verge of retirement, or on the eve of retirement, the recovery should not be claimed. In the present case, all the principles would squarely apply. Refixation is being done and recovery claimed in respect of the amount paid from 01.01.2006 and recovery is claimed after lapse of 7 to 8 years. Moreover, when the petitioner was at the verge of retirement, petitioner is admittedly the Group 'C' employee.

6. Considering the above, the impugned order to the extent of recovery of amount is quashed and set aside.

7. In case the recovery is made, the same shall be refunded to the petitioner within a period of four months.

8. The writ petition is disposed of. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)