

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

WRIT PETITION NO. 7669 OF 2018

Ambadas Narayan Borde,
Age: 60 years, Occu: Retired,
R/o. Flat No. S-1, Shivam Appartment,
Rudra Society, Wagholi, Pune. .. Petitioner

Versus

1. The State of Maharashtra,
Through Pricipal Secretary,
Home Department,
Mantralaya, Mumbai.
2. Deputy Superintendent of Land Record,
Beed, Dist: Beed.
3. The Accountant General (A & E) II
Pension Branch Office,
Nagpur, Maharashtra. .. Respondents

Shri. Nikhil S. Tekale, Advocate for Petitioner.
Shri. K. N. Lokhande, A.G.P. for Respondent/State.

**CORAM : S.V. GANGAPURWALA AND
SUNIL K. KOTWAL, JJ.
DATED : 12th July, 2018**

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :

. Rule. Rule returnable forthwith. With the consent of learned counsel for respective parties matter is taken up for final hearing.

2. Mr. Tekale, learned counsel for the petitioner submits that the petitioner retired as a “Sheristedar” with the Land Record Department. The petitioner was given the benefit and pay fixation was arrived at on 14.12.2010. The petitioner retired on 31.10.2016. Thereafter from the retiral benefits payable viz. gratuity an amount of Rs. 1,03,127/- (One Lakh Three Thousand One Hundred Twenty Seven Only) has been recovered on the ground that pay fixation was erroneously done. The learned counsel submits that the petitioner was a Class - III employee. The petitioner at no material point of time has misrepresented any facts. It is department who had carried out the process of fixation of salary and the benefit was given to the petitioner in the year - 2010. After lapse of seven years the same is sought to be recovered from the retiral benefits. The learned counsel submits that the same is impermissible. Hardship would be caused to the petitioner. The learned counsel relies on the judgment of Apex Court in the matter of ***State of Punjab and others Vs. Rafiq Masih (White Washer)*** reported in ***2015 (4) SCC 334***.

3. The learned A.G.P. for the respondents submits that on account of wrong pay fixation excess amount was paid to the petitioner in the year - 2010. The petitioner though retired in 2016, the said mistake came to the light and as such from the gratuity amount payable to the petitioner the recovery is made. The same is legal and proper.

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

5. It is not disputed that the pay fixation was done at the behest of the department and not on the basis of the representation on the part of the petitioner and the benefit was given in the year - 2010. The petitioner retired in the year - 2016 and from the retiral benefits payable the amount of Rs. 1,03,127/- (One Lakh Three Thousand One Hundred Twenty Seven Only) is recovered. It is also not disputed that the petitioner is Class - III employee. The recovery is made after lapse of seven years. The Apex Court in a case of Rafiq Masih (supra) has laid down following principles -

(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 of 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 employer's right to recover.*

6. All these principles laid down by the Apex Court are applicable in the present case. Hardship would be caused to the petitioner if the recovery is made from the retiral benefits.

7. In the light of above, the impugned order recovering the amount of Rs. 1,03,127/- (One Lakh Three Thousand One Hundred Twenty Seven Only) is quashed and set aside. The respondent shall

pay an amount of Rs. 1,03,127/- (One Lakh Three Thousand One Hundred Twenty Seven Only) recovered by it to the petitioner expeditiously and preferably within three (03) months from today.

8. Rule accordingly made absolute in above terms. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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