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

WRIT PETITION NO. 8942 OF 2016

Ashok Ramrao Shinde (died)
Through LRs
Gangasagar Ashok Shinde & others. Petitioners.

Versus

State of Maharashtra & others. Respondents.

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Mr. V.G. Sakolkar, Advocate for the petitioners.
Mr. S.G. Karlekar, A.G.P. for the State/respondent No.1.
Mr. Nitin S. Kadam, Advocate for respondent Nos. 2 and 3.

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CORAM : **S.V. GANGAPURWALA &**
SUNIL K. KOTWAL,JJ.

Dated : **25th July, 2018.**

FINAL ORDER :-

. The petitioners assail the recovery made from the pension amount.

2. Learned Counsel for the petitioners submits that deceased Ashok Ramrao Shinde died while in service on 10.06.2015. The pensionary benefits were provided and family

pension is paid to the present petitioners. From the family pension and retiral dues payable, the respondents recovered an amount of Rs. 1,29,701/- on the ground that because of wrong pay fixation, excess amount was paid for the period from 2005 to 2015. Learned Counsel submits that it would be inequitable to recover the amount after such a long lapse and that too from the family pension payable. The deceased husband of petitioner No.1 was working as Class-III employee. There is no other source of livelihood for the petitioners.

3. Mr. Kadam, the learned Counsel for respondent Nos.2 and 3 submits that wrong pay fixation was made and the deceased husband of petitioner No.1 had given an undertaking also. Pursuant to that, recovery is rightly made.

4. We have considered the submissions.

5. It is not disputed that the deceased Ashok was working as Class-III employee with respondent No.2 and while in service, he died on 10.06.2015. the retiral benefits and family pension is paid to petitioner No.1. Certainly it would be inequitable to recover the amount from the family pension and retiral benefits being paid of the deceased employee.

6. The Apex Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others***, reported in ***(2015) 4 Supreme Court Cases 334*** has laid down the following five principles :

> (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
>
> (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from the 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 discharged 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.

7. All these principles are applicable in the present case.

8. In light of the above, we pass the following order.

9. The respondents shall refund the amount recovered of Rs. 1,29,701/- to the petitioners within a period of three (03) months.

10. The Writ Petition is disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

vdd/