

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

WRIT PETITION NO. 13266 OF 2017

Ashok Madhavrao Chaudhari.

Petitioner.

Versus

State of Maharashtra and others.

Respondents.

Mr. P.B. Patil, Advocate for the petitioner.

Mr. S.B. Yawalkar, A.G.P. for the State.

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

Dated : **2nd August , 2018.**

FINAL ORDER :-

. Mr. Patil, the learned Counsel for the petitioner submits that he would restrict the present Petition to the extent of recovery.

2. An amount of Rs. 44,294/- is recovered from the gratuity amount payable to the petitioner on the ground that the increment was erroneously granted to the petitioner in the year 2009-2010.

3. We have heard learned Counsel for the petitioner and the learned Additional Government Pleader.

4. It is not disputed that the petitioner was Class-III employee and has retired in the year 2013. The petitioner was granted benefit of increment in the year 2009 and February 2010.

5. The judgment of 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** lays down five principles, wherein the recovery cannot be claimed. The same are enumerated as under :-

- (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.

6. The petitioner had retired when the recovery is claimed. The petitioner was Class-III employee. It would be inequitable for the respondents to recover the amount from the retiral benefits, as the hardship would be caused to the petitioner. All the principles enumerated in the judgment of the Apex Court in the case of **Rafiq Masih (White Washer)** (supra) would be applicable.

7. In light of the above, we direct the respondents to refund the amount of Rs. 44,294/- (Rupees Forty Four Thousand Two Hundres and Ninety Four) to the petitioner within a period of three months.

8. Writ Petition is disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

vdd/