

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.695 OF 2016

- 1) Prabhakar s/o Ramdas More,
Age-Major, Occu:Retired,
R/o-Plot No.10/61, Opp. to Sant
Gulab Baba Darbar, Khotenagar,
Jalgaon,
- 2) Narayan s/o Daulat Patil,
Age-Major, Occu:Retired,
R/o-Plot No.21 B, Opp. to Sant
Gulab Baba Darbar, Khotenagar,
Jalgaon,
- 3) Nimbaji s/o Govinda Gunjal,
Age-Major, Occu:Retired,
R/o-Plot No.39-A, Opp. to Sant
Gulab Baba Darbar, Khotenagar,
Jalgaon,
- 4) Jijabrao s/o Bhimrao Deshmukh,
Age-Major, Occu:Retired,
R/o-Gurukrupa Building,
Behind S.T. Stand, Amalner,
Dist-Jalgaon,
- 5) Sk. Hamid A. Vahed,
Age-Major, Occu:Retired,
R/o-Plot No.75, Gut No.419/2,
Usmania Park,
Shivajinagar, Jalgaon,

- 6) Bhaskar s/o Namdeo Patil,
Age-Major, Occu:Retired,
R/o-Plot No.33, Gut No.115/1,
Sainagar(Khotenagar), Jalgaon,
- 7) Naval s/o Prabhat Shinde,
Age-Major, Occu:Retired,
R/o-Plot No.16, Gut No.1766/19,
Reunagar Amalner, Dist-Jalgaon,
- 8) Bhaskar s/o Pira Shinde,
Age-Major, Occu:Retired,
R/o-Plot No.19, R.K. Nagar,
Amalner, Dist-Jalgaon,
- 9) Chagan s/o Narayan Bhoai,
Age-Major, Occu:Retired,
R/o-Bhoinagar, Jalgaon Road,
Bhusawal, Dist-Jalgaon,
- 10) Bapurao s/o Arjun Patil,
Age-Major, Occu:Retired,
R/o-Plot No.1, Gut No.1379,
R.K. Nagar, Amalner,
Dist-Jalgaon,
- 11) Prakash s/o Punju Dandagavhale,
Age-Major, Occu:Retired,
R/o-Ideal Residency,
Near Vitthal Rukmini Temple,
Shivajinagar, Satpur, Nasik,
- 12) Husenabee w/o Mahebub Tamboli,
Age-Major, Occu:Retired,
R/o-Plot No.112, Shakil Manjil,
Shivajinagar, Jalgaon,
- 13) Pandharinath s/o Hiranman Koli,
Age-Major, Occu:Retired,
R/o-Plot No.7, Gut No.83,
Dadawadi, Kalyaninagar, Jalgaon,

- 14) Chandrakant s/o Kisan Panpatil,
Age-Major, Occu:Retired,
R/o-Plot No.42, Gajanan Maharajnagar,
Manak Bag, Bhusawal, Dist-Jalgaon,
- 15) Suresh s/o Omkar Mahajan,
(deceased through his wife)
Pushpabai w/o Suresh Mahajan,
Age-Major, Occu:House Wife,
R/o-F-6, Narayan Hou. Society,
Bhusawal, Dist-Jalgaon,
- 16) Salauddin Sk. Kadar,
Age-Major, Occu:Retired,
R/o-Plot No.42, Gut No.541-B,
Shiv Colony, Jalgaon,
- 17) Suresh s/o Namdeo Gangurde,
Age-Major, Occu:Retired,
R/o-Plot No.70, Falaknagar,
Behind D.L. High School,
Bhusawal, Dist-Jalgaon,
- 18) Manohar s/o Suganichand Uttamchandani,
Age-Major, Occu:Retired,
R/o-Om Niwas, Makhija Lane,
Near Adarsh High School,
Sindhi Colony, Bhusawal, Dist-Jalgaon,
- 19) Ravindra s/o Jagannath Deore,
Age-Major, Occu:Retired,
R/o-Plot No.20, Dhakewadi,
Jalgaon,
- 20) Vijaysingh s/o Udesingh Solanki,
(Deceased through his wife)
Nanda w/o Vijaysingh Solanki
Age-Major, Occu:Retired,
R/o-Plot No.40-B, Uday Bhavan,
Khotenagar, Jalgaon,

- 21) Nimbaji s/o Ragho Pariskar,
Age-Major, Occu:Retired,
R/o-Punam Apt., Tapinagar,
Bhusawal, Dist-Jalgaon.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32,
- 2) Director General of Police,
Maharashtra State, Mumbai,
- 3) Inspector General of Police,
Nasik Region, Nasik,
- 4) Dist. Superintendent of Police,
Jalgaon,
- 5) Principal Accountant General (A & E),
Maharashtra, Mumbai-20.

...RESPONDENTS

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Mr.Prakashsingh B. Patil Advocate for
Petitioners.

Mr.S.S. Dande, A.G.P. for Respondent
Nos. 1 to 5.

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 5TH FEBRUARY, 2018

DATE OF PRONOUNCING JUDGMENT: 12TH FEBRUARY, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition under Article 226 of the Constitution of India, is filed with following prayer:

"B) By appropriate Writ in the nature of Certiorari or any other Writ of like nature or by appropriate orders the respondents may please be directed to refund the amount of Rs.14,14,026/- recovered from the Petitioners with interest @ 18% per annum from the date of deduction till realization of full & final amount within a stipulated period as this Hon'ble High Court thinks fit."

3. It is contended by the Petitioners that they are the retired employees of Respondent No.1

- State of Maharashtra and were working under the control and supervision of respondent Nos.2 to 4. The Petitioner Nos.15 and 20 died during the service and the rest of the Petitioners retired due to superannuation. The respondents have deducted the amounts from the gratuity and pension from the petitioners illegally. The amount so deducted by the Respondents is as under:

Petitioner No.	Post held at the time of retirement	Date of Retirement	Amount deducted (in Rs.)
1)	A.S.I. (Assistant Sub-Inspector)	31/08/2013	99,197/-
2)	A.S.I.	31/12/2012	1,57,678/0
3)	A.S.I.	31/07/2011	34,097/-
4)	A.S.I.	31/05/2013	37,788/-
5)	A.S.I.	31/05/2013	71,751/-
6)	P.H.C. (Police Head Constable)	31/10/2012	56,071/-
7)	P.H.C.	31/05/2011	28,159/-
8)	A.S.I.	31/10/2013	77,891/-
9)	P.H.C.	31/05/2011	41,076/-
10)	A.S.I.	01/06/13	66,023/-

11)	A.S.I.	31/05/2011	44,617/-
12)	A.S.I.	30/09/2010	45,328/-
13)	A.S.I.	31/05/2012	87,512/-
14)	P.S.I.	31/09/2014	60,799/-
15)	A.S.I.	31/10/2013	71,510/-
16)	A.S.I.	31/10/2012	82,723/-
17)	A.S.I.	31/03/2012	1,01,264/-
18)	A.S.I.	31/05/2012	66,664/-
19)	A.S.I.	12/06/13	87,836/-
20)	A.S.I.	29/09/2007	34,904/-
21)	A.S.I.	31/07/2013	61,138/-
		TOTAL:	14,14,026/-

4. It is the case of the Petitioners that no excess payments were made to them. The payments of salaries were made to the Petitioners after due verification. There was no fault on the part of the Petitioners. Even for the sake of arguments it is admitted that excess payment is made by the Respondents, the Petitioners cannot be held responsible for making repayment of the above mentioned amounts and no powers are vested with the Respondents to recover the said amount. The

Petitioners made number of representations to the Respondents for refund of above mentioned amounts, but it was in vain. Hence this Petition.

5. Learned counsel appearing for the Petitioners submits that the recovery of the amounts under the head of excess payment is illegal and void ab-initio. It is submitted that at the time of deducting the said amounts, no chance of hearing was given to the Petitioners by the Respondents which is against the principles of natural justice. It is submitted that it is settled principle of law that State is not vested with power to recover the amount under the head of excess payment if such payment is made by mistake by the State authorities. Therefore, it is submitted that the Petition deserves to be allowed.

6. On the other hand, learned A.G.P. appearing for the Respondents, referring to the

affidavit-in-reply filed on behalf of Respondent Nos.2 and 4 submits that Respondent Nos.3 and 4 vide their letters dated 20th July, 2015 and 29th July, 2015, addressed to the Additional Chief Secretary, Home Department, Mantralaya, Mumbai had sent 31 applications of retired police constables, claiming refund of amount recovered from them which was overpaid to them, relying upon the order and Judgment passed by the Hon'ble Apex Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer)¹. It is submitted that after checking the said applications, it has been revealed that only Petitioner at Sr. Nos. 1, 4, 6, 7, 8, 9, 13, 17 and 18 are included in the said list of 31 retired police personnel. It is submitted that the action of recovery of over payment made to the Petitioners, was taken on the basis of the objections taken by the Pay Verification Units, Nashik and the said action is free from any mala fides, vindictiveness and the

¹ 2015(4)S.C.C. 334

same is not in violation of any statutory rules.

7. It is further submitted by the learned A.G.P. that after receipt of reports of Respondent Nos.3 and 4, the proposals were sent to the State Government for seeking guidance. Thereafter the opinion of Law and Judiciary was asked. After receipt of the opinion from Law and Judiciary, it was intimated to S.P. Jalgaon and Ahmednagar to take action as per the opinion given by the Government in Law and Judiciary Department. It is further submitted that the Petition is not maintainable as the Petitioners have alternate efficacious remedy to approach the Maharashtra Administrative Tribunal. However the Petitioners have not approached the Maharashtra Administrative Tribunal and directly approached this Court by filing present Petition. It is further submitted that there is inordinate delay in approaching this Court, which is not explained by the Petitioners.

8. Learned A.G.P. referred to the opinion given by the Law and Judiciary Department and submitted that, the report mentions that the concerned authority has taken proper action in respect of the recovery of amount. It is further mentioned in the said report that it is not mentioned in the Judgment of the Supreme Court in the case of Rafiq Masih, cited supra, that the excess amount should be returned back to the retired employees, if the excess amount was already recovered. Therefore, it is submitted that the Writ Petition may be rejected.

9. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioners and learned A.G.P. appearing for the State. We have carefully perused the averments in the Petition, the documents placed on record and also the reply filed on behalf of the Respondents and the annexures thereto.

10. From the perusal of the documents placed on record it is clear that, all the Petitioners herein were the police personnel, i.e. employees in Group "C". Except Petitioner Nos.15 and 20 all other Petitioners retired on attaining the age of superannuation. Petitioner Nos.15 and 20 died during the course of their employment. It is the case of the Respondents that as there was wrong fixation of pay and due to which excess amount was paid to the Petitioners, the said amount was recovered from the retirement dues of the Petitioners such as gratuity and pension, as per the objection taken by the Pay Verification Unit, Nashik.

11. In the similar fact situation, the Division Bench of this Court (CORAM: R.M. BORDE AND A.M. DHAVALA, JJ.) in Writ Petition No.5367 of 2016 (Ravindra s/o Ramchandra Patil vs. the State of Maharashtra and others), on 18th July, 2017, after considering the principles laid down by the

Apex Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer), cited supra, passed following order:

"Respondents are directed to refund the amount of Rs.1,02,554/- recovered from the gratuity amount paid to the petitioner, together with interest at the rate of 10% per annum from the date of recovery till realisation, as expeditiously as possible, preferably within six months from today."

12. In the present matter also, from the perusal of the documents placed on record it reveals that all the Petitioners were working in Group "C" category. No document is placed on record by the Respondents showing that an undertaking was furnished by the Petitioners at the time of fixation of their pay, that in the event of excess payment paid to them they would refund the same. From careful perusal of the documents placed on record, it reveals that

recovery of excess payment is made from the retirement dues payable to the Petitioners. Therefore, taking the same view and for the same reasons as recorded in the order dated 18th July, 2017 in Writ Petition No.5367 of 2016, referred above, this Petition also deserves to be allowed. Hence we pass following order:

O R D E R

I) The Respondents are directed to refund the amount of Rs.14,14,026/- recovered from the gratuity and retirement dues paid to the Petitioners, together with interest at the rate of 10% per annum from the date of recovery till realization, as expeditiously as possible, preferably within six months from today.

II) Rule is made absolute on above

terms. No order as to the costs.

III) The Writ Petition stands disposed
of accordingly.

[S.M. GAVHANE, J.]

asb/FEB18

[S.S. SHINDE, J.]