

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

14 WRIT PETITION NO. 3117 OF 2017

ABA NAMDEO BORSE AND OTHERS ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. Paresh B. Patil, Advocate for the Petitioners.
Mr. S. B. Pulkundwar, AGP for Respondent No.1.
Mr. Vijay Sharma, Advocate for Respondent Nos.2 to 8.

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

DATED : 26th JULY, 2018.

PER COURT:-

1. The petitioners challenge the order recovering the amount from petitioners from the retiral benefits on the ground that mistakenly wrong pay fixation was done.

2. Mr. Patil, learned counsel for the petitioners submits that the time bound promotional pay scale was given in the year 2008 and subsequently the petitioners have retired. In the year 2012, ex-parte order is passed claiming recovery from the petitioners from retiral benefits. The same was without notice to the petitioners. The learned counsel submits that from the retiral benefits, the recovery cannot be made. The learned counsel relies on the judgment of Apex

Court in a case of **State of Punjab and Others etc. vs. Rafiq Masih (White Washer) etc.** reported in **2015 AIR SCW 501.**

3. The learned counsel for respondent nos.2 and 3 submits that under wrong assumption, the excess payment was made to petitioners. The benefits were wrongly given to the petitioners. In view of that, respondents have every right to recover the excess amount paid, otherwise that would tantamount to unjust enrichment.

4. We have considered the submissions canvassed by the respective parties.

5. It is not disputed that the petitioners were working as Class-III employees and in the year 2008 benefits of time bound promotional pay scale were given to petitioners. The petitioners have retired and after retirement of petitioners orders are passed seeking recovery on account of wrong pay fixation.

6. The Apex Court in a case of **State of Punjab and Others etc.** (*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."

7. The petitioners are Class-III employees. The recovery is being claimed from retiral benefits. It would be inequitable at this stage to claim recovery from the petitioners.

8. Considering all the aforesaid aspects, the impugned order to the extent of recovery is quashed and set aside. The respondents shall refund the amount recovered from the petitioners pursuant to the impugned order within a period of (03) three months from today.

9. Writ Petition is disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE