

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

WRIT PETITION NO. 14718 OF 2017

Smt. Shobha w/o Janu Jadhav.

Petitioner.

Versus

The State of Maharashtra and others.

Respondents.

Mr. B.V. Thombre, Advocate for the petitioner.

Mr. S.G. Karlekar, A.G.P. for the State/respondent No.1.

Mr. S.M. Ganachari, Advocate for respondent Nos.2, 3 and 5.

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

Dated : **14th June, 2018.**

ORAL ORDER :-

. Heard Mr. Thombre, learned Counsel for the petitioner.
He submits that recovery is claimed after retirement of the petitioner.
The petitioner retired on 31.07.2017 and recovery order is issued on
24.07.2017 claiming recovery of Rs. 3,68,564/- from the pensionary
benefits. It is said that the said recovery is made for the excess
payment made during the period from 23.12.1997 to 31.07.2017 on
account of wrong pay fixation.

2. Mr. Ganachari, learned Counsel for respondent Nos.2, 3 and 5 submits that the petitioner is not entitled for unjust enrichment. Because of the erroneous pay fixation, excess amount has been paid and the respondents have every right to recover the excess amount even from the pensionary / retiral benefits. In view of that, no error has been committed by passing the impugned order.

3. It is not disputed that the petitioner has retired w.e.f. 31.07.2017 and just before the retirement the impugned order is issued claiming recovery for the period from 23.12.1997 to 31.07.2017.

4. It is also not disputed that the petitioner was Class-III employee. 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 five principles.

The same read thus :

- (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.

5. The petitioner is Class III employee. The petitioner has retired from the service. Hardship would be caused to the petitioner if recovery is made at this stage. All the principles enumerated by the Apex Court in the case of Rafiq Masih (supra) are applicable to the present matter.

6. In light of the above, the impugned order claiming recovery from the retiral benefits of the petitioner is quashed and set aside.

7. Writ Petition is disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE