

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

WRIT PETITION NO. 14400 OF 2017

Shrinivas Venkatrao Deshmukh .. Petitioner
Versus
The State of Maharashtra and other .. Respondents

**WITH
WRIT PETITION NO. 14682 OF 2017**

Bapu Ganpatrao Lakde .. Petitioner
Versus
The State of Maharashtra and other .. Respondents

**WITH
WRIT PETITION NO. 14683 OF 2017**

Hanmant Girjappa Bane .. Petitioner
Versus
The State of Maharashtra and other .. Respondents

**WITH
WRIT PETITION NO. 14684 OF 2017**

Devidas Sadashivrao Aathwale .. Petitioner
Versus
The State of Maharashtra and other .. Respondents

WITH
WRIT PETITION NO. 14685 OF 2017

Somnath Vishwnath Aandhalkar	..	Petitioner
Versus		
The State of Maharashtra and other	..	Respondents

WITH
WRIT PETITION NO. 14686 OF 2017

Sayyad Abdul Sami Sayyad Dawaod	..	Petitioner
Versus		
The State of Maharashtra and other	..	Respondents

WITH
WRIT PETITION NO. 14687 OF 2017

Manohar Govindrao Joshi	..	Petitioner
Versus		
The State of Maharashtra and other	..	Respondents

WITH
WRIT PETITION NO. 14690 OF 2017

Dhondiram Bapu Videkar	..	Petitioner
Versus		
The State of Maharashtra and other	..	Respondents

WITH
WRIT PETITION NO. 14868 OF 2017

Ramnath Mahadeo Kale .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

WITH
WRIT PETITION NO. 14919 OF 2017

Shivajirao Bapurao Pandit .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

WITH
WRIT PETITION NO. 14945 OF 2017

Bhaskar Laxman Jojare .. Petitioner
Versus
The State of Maharashtra and other .. Respondents

WITH
WRIT PETITION NO. 15189 OF 2017

Balasaheb Venkatrao Kaijkar .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

Shri. Narwardkar, Advocate h/f Shri. S. A. Nagarsoge, Advocate for Petitioners.

Shri. S. G. Karlekar, A.G.P. for Respondent Nos. 1 and 2 in all matters.

Shri. Umesh S. Mote, Advocate for Respondent No. 3 to 5 in Writ Petition No. 14400/2017.

Shri. P. D. Suryawanshi, Advocate for Respondent Nos. 3 to 5.

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

DATED : 04th June, 2018

PER COURT:

. All these petitioners were working as Pharmacist. They have retired. Upon retirement order is passed regarding re-fixation of pay scale and claiming recovery.

2. Mr. Narwadkar, learned counsel for the petitioners submit that the petitioners are assailing the order to the extent of recovery.

3. According to the learned counsel, all these petitioners have retired from service. The recovery is claimed under the impugned order dated 26.04.2017. The amount of which recovery is claimed is paid in the year 2011. The learned counsel submits that the petitioners are not guilty of any fraud or misrepresentation. The respondents have subsequently

found some disparity in the pay scale. The show cause notice was also not issued to the petitioners. According to the learned counsel, the order is erroneous.

4. Mr. Mote, the learned counsel for the respondents submit that the petitioners were issued with the notices. Some of the petitioners have also filed reply and thereafter the impugned order is passed.

5. As it is submitted by the learned counsel that the petitioners are challenging the impugned order to the extent of recovery, we are considering the matter from the point of view of recovery being claimed.

6. It appears that all these petitioners have retired long back, almost five years back. The recovery is also claimed in respect of the amount paid prior to six years.

7. It is not disputed that the petitioners were working as class III employees.

8. Hardship would be caused to the petitioners if recovery is claimed from them after five to six years of their retirement.

9. In such a case, the principles laid down in a case of State of Punjab and others Vs. Rafiq Masih and others, reported in 2015 4 SCC 334 would squarely apply. The apex court has laid down following propositions which are reproduced as under :

“It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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."

10. The petitioners were working as class III. They have retired long back. The recovery is claimed in respect of the amount prior to five years. It would be inequitable and hardship would be caused if recovery would be claimed at this stage.

11. In the light of above, the impugned order to the extent of recovery is quashed and set aside. Writ petitions are accordingly disposed of. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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