

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

WRIT PETITION NO. 15242 OF 2017

Padam Alasing Rathod

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Anand V. Indrale Patil, Advocate h/f Shri S. P. Dhobale,
Advocate for the Petitioner.

Shri S. G. Karlekar, A.G.P. for the Respondent No. 1.

Shri S. R. Dhepale, Advocate for Respondent Nos. 2 to 4.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATE : 08TH MARCH, 2018.

FINAL ORDER :

. The petitioner challenged the recovery claimed by respondents.

2. Mr. Patil, the learned advocate for the petitioner submits that, the recovery of Rs. 93,128/- is claimed from the pensionary benefits of the petitioner on the ground that additional increment was wrongly given. The learned counsel further submits that, the petitioner had never misrepresented, nor the additional increment was given on the representation of the petitioner. The learned counsel submits that, hardship would be

caused to the petitioner, if the recovery is claimed now. The learned counsel relies on the judgment of the Apex Court in a case of State of Punjab Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334.

3. Mr. Dhepale, the learned advocate for respondent Nos. 2 to 4 submits that, the petitioner had given undertaking that in case additional increment is found to be wrongly given, then he would repay the same. The learned counsel submits that, even Rule 134-A of the Maharashtra Civil Services (Pension) Rules permits the respondents to recover the excess amount paid.

4. It is not disputed that, the petitioner retired as a Class III employee on 31st December, 2017. The benefit of additional increment was given to the petitioner in the year 2007.

5. In such a case, the judgment of the Apex Court in a case of State of Punjab Vs. Rafiq Masih (White Washer) and others would squarely apply. The Apex Court in the said judgment has held as under :

18. 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.

7. It would appear that, the petitioner is retired employee. The recovery is of more than five years. The petitioner was a Class - III employee. The petitioner is not responsible for additional increment nor additional increment was given on

misrepresentation by the petitioner. Hardship would be caused to the petitioner, if the recovery is claimed now. Though the undertaking was given, the same was given as the petitioner was in service and the petitioner had no alternative, but to give the same. However, we have passed this order on equity and hardship being caused to the petitioner.

8. In view of the aforesaid counts, the impugned order to the extent of recovery is quashed and set aside. The writ petition is disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 18