

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3309 OF 2018

Durgadas S/o Bhaurao Warade

...Petitioner

Versus

State of Maharashtra and Ors.

...Respondents

Mr. G.L. Deshpande, Advocate for Petitioner

Mrs. V.N. Patil-Jadhav, Assistant Government Pleader for
Respondent Nos. 1 to 3 and 5

Mr. R.S. Deshmukh, Advocate for Respondent Nos. 4 and 6

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

DATE : 7th MARCH, 2019

ORAL ORDER:

1. The petitioner has retired as Assistant Superintendent in Establishment of the respondent.
2. The only grievance of the petitioner is that an amount of Rs. 1,19,188/- has been recovered from the gratuity amount payable to the petitioner.
3. We have heard Mr. Deshpande, the learned Counsel for the petitioner and Mr. Deshmukh, the learned Counsel for the respondent Nos. 4 and 6.
4. There does not appear to be much dispute about the

increment advanced erroneously to the petitioner in the year 2003 and 2004 and pursuant thereto, the pay fixation was done upon the implementation of the 6th Pay Commission from 01.01.2006.

5. The only question is about the recovery being effectuated from the retiral benefits of the petitioner.

6. It is not disputed that the petitioner has retired as Class-III employee. The recovery is claimed in respect of the increments granted about 10 years prior to his retirement. Certainly, hardship would be caused to the petitioner for the recovery being made from the retiral benefits. In such eventuality or the parameters as laid down by the Apex Court in the case of ***State of Punjab and Ors. Vs. Rafiq Masih (White Washers) reported in (2015) 4 SCC 334*** would apply. The Apex Court has laid down the parameters at para No. 12 (i to v), which are as under :-

12. 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. The petitioner was also not responsible for wrong pay fixation.

8. Considering the above, the respondents shall repay the amount of Rs. 1,19,188/- on account of the recovery made from the retiral benefits on account of erroneous pay fixation within a period of four months.

9. The Writ Petition is accordingly disposed of. No costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

mta