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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1584 OF 2017

Gulab s/o Ananda Pawar

PETITIONER

Age - 60 years, Occ - Retired Serviceman

R/o Plot No. 52, Raje Sambhaji Nagar

Near Agrasen School,

Sakri Road, Dhule

District - Dhule 424 001

VERSUS

1. The State of Maharashtra RESPONDENTS
Through its Secretary,
Water Supply and Sanitation Department
Seventh Floor, Gokuldas Tajpal Hospital Building,
Lokmanya Tilak Road,
Mantralaya, Mumbai 400 001
2. The Senior Accounts Officer,
Office of the Accountant General,
Accounts Office, "Pratishtha Bhavan"
101, Maharshi Karve Road,
Mumbai 400 020
3. The Executive Engineer,
Dhule Medium Project D-1
Sinchan Bhavan, Sakri Road,
Near Vidyavardhini College, Dhule
4. The Deputy Executive Engineer
Dhule Medium Project, D-1
Sinchan Bhavan, Sakri Road,
Near Vidyavardhini College, Dhule
5. The Superintending Engineer,
D. M. P. D. Dhule, Tapi Development Corporation,
Sinchan Bhavan, Dhule

6. The Chief Engineer, Office of
Tapi Development Corporation, Jalgaon
Near Akashwani Kendra, Jalgaon, Dist- Jalgaon

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Mrs. Pratibha J. Bharad, Advocate for the petitioner

Mr. S. N. Kendre, AGP for respondent - State

Mr. A. D. Pawar, Advocate for respondents No. 3 and 4

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**[CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ.]**

DATE : 3rd JULY, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.

2. There is no dispute on factual aspects that the petitioner had joined services with the respondents as a driver in 1978, initially on daily wages and later on had been confirmed in employment in 1983. There is no dispute also on that his overall performance in duty has been satisfactory and the record bears that during the course of employment, the petitioner went on getting promotional pay scales from time to time and pay fixation accordingly had been made as would be applicable. The petitioner retired on 28th February, 2015 on attaining age of superannuation, completing unblemished service tenure of 36

years, 10 months and 4 days. Pension papers accordingly were submitted. Even no dues certificate had been issued to him on 31st March, 2015.

3. Suddenly, an order dated 31st December, 2015 came to be passed by Deputy Executive Engineer, Dhule, communicating the petitioner that a difference of Rs.43,715/- is being recovered from him in one go. It is this order, which is the cause of action for the petitioner to be before this court. Amount sought to be recovered is for the period from 2010 to 2015.

4. After hearing learned advocates on either side, it does not appear to be the case of the respondents at all that the petitioner had played any role in fixation and or increasing pay after implementation of 6th Pay commission. Whatever was being paid by the respondents was being received by the petitioner without realizing that payment is being made in excess than due to him.

5. There appears to be no dispute that the petitioner has been working as class IV employee and that he had no role or any hand in receipt of increments being paid to him, albeit, may be under error.

6. The Supreme Court in the case of “*State of Punjab and Others V/s Rafiq Masih (White Washer) and Others*” reported in (2015) 4 SCC 334, has issued following guidelines -

“ 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

(i) *Recovery from the employees belonging to Class III and Class IV services (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 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 is not the case that the amount recovered from the petitioner would make any significant contribution to the State coffers. As a matter of fact, looking at the figure, it is a meagre amount in comparison and would not have any significant impact on the State's economy. Whereas, it appears, claiming back the amount from the petitioner, having regard to facts and circumstances, may affect the petitioner in some measure. Thus, it appears that it would be inequitable to recover the amount from the petitioner.

8. In view of aforesaid, the impugned order is unsustainable and liable to be quashed and set aside and the writ petition deserves to be allowed.

9. Writ petition, as such, is allowed. Impugned order dated 31st December, 2015 passed by respondent No. 4, Deputy Executive Engineer, Dhule Medium Project Division is quashed and set aside. Rule is made absolute in aforesaid terms.

10. At this stage, learned advocate for the petitioner purports to submit that there has been wrong fixation of pay and pension and petitioner's pension requires upward revision according to

correct pay. It is for the petitioner to make an appropriate approach in this respect and this order in writ petition would not undermine such an effort if made.

11. Writ petition stands disposed of.

[S. M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE