

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 2907 OF 2014

Manohar Govindrao Gajre
Age 71 years, Occupation: Nil,
R/o Hingoli Taluka and
District : Hingoli.

...Petitioner.

Versus

- 1] The State of Maharashtra
- 2] The Accountant General (Pension)
A.G. Nagpur.
- 3] The Treasury Officer,
Hingoli
- 4] The Chief Officer,
Municipal Council Hingoli.
- 5] The D.D. Jawlekar
Age Major, Occupation: Service
Ex-Cheif Officer,
Municipal Council Hingoli
now at present working at
Latur Municipal Corporation
as Deputy Commissioner
Municipal Council Latur
(Deleted as per Hon'ble High
Court's order dated 11-1-2018.)
- 6] Shri. Virchand Marotrao Paratwar
Age 71 years, Occupation :-
Retired E.S.T. Clerk
Municipal Council Hingoli
R/o Gramin Police Station
Jain Galli Hingoli
- 7] The Collector,
Collectorate, Hingoli

...Respondents.

Mr. S.K. Adkine, Advocate for Petitioner.

Mr. S.P. Tiwari, AGP for Respondent Nos. 1 and 7.

Mr. Vivek Bhavthankar, Advocate for Respondent No. 4.

Mr. K.D. Jadhav, Advocate for Respondent NO.6

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**
DATED : 8th January, 2019.

JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The proceeding is filed to challenge the demand made by respondent employer against the petitioner of so called excess amount paid to him as salary and also the amount which is demanded towards House Building Allowance which was given to the petitioner. The submissions made and the record show that to the employer, petitioner had given the date of birth as 2.7.1944. As per the age of superannuation, he was to retire on 31.7.2002, but he retired on 31.7.2003. Thus, salary of one year more was paid and he worked for one year more after his age of superannuation. When the matter was sent for fixing his pension, this mistake was detected. The pension and gratuity amounts were fixed, but the direction was given by the concerned department to respondent employer that the excess amount already paid to the petitioner is recovered.

3) The reply affidavit shows the contention that not only the amount mentioned by the authority created for fixing pension is due, but also the amount given by way of House Building Allowance needs to be recovered as that amount remained to be recovered. The learned counsel for respondent employer placed reliance on the observations made by the Apex Court in the case reported as **2016 SCC OnLine SC 748 [High Court of Punjab and Haryana Vs. Jagdev Singh] (Civil Appeal No. 3500/2006)**. In that case, the Apex Court directed the employee to return the amount by holding that there was undertaking given by the employee, Judicial Officer that he would return the amount if there was some mistake committed in making fixation of pay. The facts of the reported case were altogether different.

4) In the present matter, admittedly due to some mistake which was probably committed by the employer, the petitioner continued to work with the respondent Municipal Council, the employer for one more year. It can be said that work was taken from him and in respect of the work salary was paid to him. As work was taken from him, this Court holds that he cannot be asked to return the amount of salary paid to him in respect of that work. However, the amount which was given to him by way loan towards House Building, if that amount was not recovered already, the employer is

entitled to recover that amount as per the interest which is permissible on such amount. So, the following order.

O R D E R

1. Petition is allowed.
2. The demand made by the respondent employer from the petitioner in respect of salary paid to him for the period 31.7.2002 to 31.7.2003 is hereby set aside. However, the employer is entitled to recover House Building Allowance (Rs.18440/-) with interest, if any, payable if it is already not recovered from the petitioner.

Rule is made absolute in aforesaid terms.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

SSC/