

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

39 WRIT PETITION NO.3205 OF 2019

MADHAV SHIVRAM AGHAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Mantri Ramesh R.
AGP for Respondents/State : Mr. P.G. Borade
Advocate for Respondents : Ms. V.S. Choudhari for R/2 & 3

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**CORAM : S.V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.**
DATE : 05.12.2019

PC. :-

Mr. Mantri the learned counsel for the petitioner submits that the challenge is to the extent of recovery only.

2. It is submitted by Mr. Mantri the learned counsel that the petitioner has retired on attaining the age of superannuation on 31.01.2015. The learned counsel submits that in November-2015 his pension was reduced without notice to him. The petitioner retired as a Class-III employee i.e. Agricultural Officer. The respondents have recovered an amount of Rs.2,50,000/- at the time of filing of the petition.

3. The learned advocate for the respondent nos.2 and 3 submits that

wrong pay fixation was done of the petitioner and as wrong pay fixation was done the respondents are entitled for recovery of the amount. The same is also permissible as per the Maharashtra Civil Services (Pension) Rules.

4. It is not disputed that the petitioner retired as a Class-III employee and the recovery is claimed from the retiral benefits of the petitioner. The Apex Court in the case of **Punjab V/s. Rafiq Masih (White Washer)** reported in **2014, SCC 883** has laid down following parameters:

"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 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 employers right to recover."

5. In the present case hardship would be caused to the petitioner if recovery is claimed from the retiral benefits. The petitioner was working as a Class-III employee the recovery is for a period of five years or more.

6. All the parameters laid down in the case of **Rafiq Masih** (supra) are attracted in the present matter.

7. In light of the above, the impugned order to the extent of recovery is quashed and set aside. Writ Petition is disposed of.

8. If any recovery is claimed from the petitioner the same shall be refunded to the petitioner preferably within four months. We regard to the deduction of pension and fresh pay fixation the petitioner may take appropriate steps in that regard with the authorities concerned.

[AVINASH G. GHAROTE, J.]

[S.V. GANGAPURWALA, J.]