

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO.5901 OF 2017

Ratnakar s/o Tukaram Dandge,
Age 61 years, occupation Pensioner,
R/o "Heer Ratna", New Nandanvan Colony,
Gut No.2, Plot No.2,
Aurangabad. ...Petitioner.

VERSUS

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai -32.
2. The Municipal Corporation Aurangabad,
Through its Commissioner,
Aurangabad Municipal Corporation,
Aurangabad. ...Respondents.

...
Advocate for Petitioners : Mr. Pagare S. N.
AGP for Respondent No.1 : Mr. A. V. Deshmukh.
Advocate for Respondent No.2 : Mr. Vaidya A. R.

...

**[CORAM : SUNIL P. DESHMUKH AND
SMT. VIBHA KANKANWADI, JJ.]**

DATE : 27th NOVEMBER, 2019.

ORAL JUDGMENT :

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

2. There is no dispute that, petitioner had been working on a Class-3 post. The petitioner contends that, after superannuation, re-fixation of pay has taken place and amount is recovered from benefits which ensue on retirements.

3. Learned counsel for petitioner Mr. S. N. Pagare, therefore, submits that, such a recovery is harsh, without hearing him, inequitable and is precluded having regard to the decision of Hon'ble Supreme Court in the case of State of Punjab and others Versus Rafiq Masih (White Washer), reported in (2015) SCC 334.

4. Learned counsel Mr. Vaidya purports to point out that, there had been some irregularity in making payment to petitioner during the course of service, with transition of petitioner from the cadre of driver to that of clerk. Certain over payments have been made and such an order had been passed in 2005 which had not been taken exception to. He points out that, that was the order under which the petitioner had been taken up in the higher cadre of Clerk.

5. This submission is being countered by counsel for petitioner stating that though such an order had been passed, in alleged over payments petitioner had not played any role in the same. He

submits that for almost a decade, alleged order had not been acted upon. In any case such post retirement recovery is improper. In the circumstances, looking at the guidelines, it is not disputed that, the petitioner is retired Class-3 employee and after retirement, re-fixation is done. The recovery is made of an amount five years prior to the retirement. The hardship in the circumstance is being caused to the petitioner.

6. Learned counsel Mr. S. N. Pagare for the petitioner during the course of submission has referred to a decision, in a group of three writ petitions bearing No.13656 of 2018 and companion writ petitions, dated 10-04-2019, whereunder, it appears in similar matter having regard to the (White Washer) case (Supra) , reproducing the guidelines thereunder which are also quoted herein below for ready reference :-

- “(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. We deem it appropriate, in the facts and circumstances, that we shall follow the above guidelines. In the light of above, impugned order to the extent of recovery is quashed and set aside, and if recovery is made from the petitioner, the same be refunded to the petitioner preferably within a period of four (04) months from the date of receipt of writ of this order. Writ Petition is disposed of.

8. Rule made absolute in aforesaid terms.

[SMT. VIBHA KANKANWADI]
JUDGE

[SUNIL P.DESHMUKH]
JUDGE

vjg/-.