

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

48 WRIT PETITION NO.7781 OF 2019

SHIVAJI MANIKRAO JIGALE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Girish N. Kulkarni, Advocate for the
Petitioner.

Mr. P. K. Lakhotiya, AGP for Respondents-State.

Mr. Santosh B. Pulkundwar, Advocate for Respondent
Nos.2 to 4.

...

**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATED : 21st AUGUST, 2019.

PER COURT:-

1. Mr. Kulkarni, learned counsel submits that the recovery is claimed by the respondents from the petitioner in respect of the amount paid to the petitioner in the year 1999-2006. The said amount is recovered from the gratuity payable to the petitioner. According to the learned counsel the petitioner was working as Junior Clerk (Class III post). The learned counsel submits that it would be inequitable to claim recovery from the retiral benefits. The learned counsel relies on the judgment of the Apex Court in a case of **State Of Punjab & Ors vs Rafiq Masih (White Washer)** reported in (2015) 4 SCC 334.

2. Mr. Pulkundwar, learned counsel for the Zilla Parishad submits that petitioner was wrongly given pay scale and the same is rightly recovered. If the petitioner is allowed to retain the amount, the same is unjust enrichment. In fact, the petitioner was working as Muster Assistant with Public Works Department and subsequently brought on consolidated pay. While applying 5th Pay Commission during the period 1999-2006 erroneously wrong pay was fixed and as such, recovery was claimed.

3. It is not disputed that the petitioner was working as Class-III employee and has retired as Class-III employee. It is also not disputed that on account of wrong pay fixation for the period 1999-2006, the petitioner was paid excess amount. The petitioner has retired in December 2016 and from his retiral benefits the recovery is claimed.

4. The Apex Court in a case of **State Of Punjab & Ors vs Rafiq Masih (White Washer)** (supra) has laid down following parameters:

"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."

5. In the present matter also the recovery is claimed from the retiral benefits of the petitioner. The petitioner was Class-III employee. The recovery cannot be claimed for a period prior to five year. It would be inequitable to recover the amount from the retiral benefits. All the parameters laid down in the case of **State Of Punjab & Ors vs Rafiq Masih (White Washer)** (supra) are satisfied.

6. In the light of above, the order of recovery is quashed and set aside. The respondent shall refund the amount recovered from the retiral

benefits of the petitioner within a period of three (03) months.

7. Writ Petition is disposed of. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/August-19