

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8165 OF 2018

Laxman S/o Gangaram Kurkure

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. S.B. Sontakke, Advocate for Petitioner

Mr. S.B. Pulkundwar, Assistant Government Pleader for
Respondent No. 1

Mr. N.B. Suryawanshi, Advocate for Respondent Nos. 2 to 4

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATE : 24th APRIL, 2019

ORAL ORDER:

1. Mr. Sontakke, the learned Counsel for the petitioner submits that the respondent is seeking recovery on the ground that erroneous pay fixation was done in the year 1996. According to the learned Counsel, the petitioner is due to retire within five days. The recovery is sought to be claimed in the year 2018 on the basis of the pay fixation done in the year 1996. The same is not permissible. The petitioner is Class-III employee. The learned Counsel relied on the Judgment of the Apex Court in a case of ***State of Punjab and Ors. Vs. Rafiq Masih (white washer) reported in 2015 (4) SCC 334.***

2. Mr. Suryawanshi, the learned Counsel for the respondents submits that at the time when the pay fixation was done in the year 1996, the petitioner had given an undertaking to allow recovery if the pay fixation is found to be erroneous.

3. The learned Counsel submits that petitioner was entitled for Rs. 5,000/- per month, but the petitioner was actually receiving Rs. 5150/- per month.

4. The Apex Court in the case of *State of Punjab Vs. Rafiq (supra)* has laid down the following parameters :-

(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 employees has been wrongfully been required to discharge duties of 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 of harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

5. The petitioner herein is the Class-III employee. The recovery claimed is on account of pay fixation done 20 years back. The petitioner is on the verge of retirement. It would not be appropriate to claim recovery after such a long period.

6. In the light of the above, the impugned order to the extent of claiming recovery is quashed and set aside.

7. The Writ Petition is accordingly allowed. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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