

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

108 WRIT PETITION NO.8194 OF 2018

NAEEM AHEMADKHAN KILAWARKHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Shaikh H.M.
AGP for Respondents: S.B.Pulkundwar
Advocate for Respondents 2 to 4 : D.P.Bakshi

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

DATE : 18/06/2019

PER COURT :

The learned counsel for petitioner submits that the petitioner is assailing the action of the respondents in claiming recovery of the amount from the pensionary benefits. According to the learned counsel the petitioner was working as a Store Keeper (Class-III post). The pay fixation was done by the respondents. The pay fixation was not on account of fraud or misrepresentation. From the retireal benefits the respondents cannot claim the recovery on the ground of wrong pay fixation. The learned counsel relied upon judgment of Apex Court in the case of **State of Punjab and others Versus Rafiq Masih; AIR 2015 SC 696.**

2] Mr.Bakshi, learned counsel submits that because of wrong pay fixation excess amount has been paid as such said amount has been rightly recovered by the respondents.

3] The learned counsel for petitioner also submits that the

respondents have recovered the fine amount from basic pension. The punishment was cancelled in the year 2016. Respondent be directed to pay interest on the said amount also alongwith basic amount. According to Mr.Bakshi, learned counsel fine amount has not been recovered.

4] It is not disputed that the petitioner was working as a Store Keeper (Class-III post). The recovery is sought to be claimed from the retireral benefits of the petitioner after retirement. The Apex Court in the case of State of Punjab V/s Rafiq has laid down the following parameters.

“12] It is not possible to postulate all situations of hardship, which would govern employee 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 hereinabove, 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] It would be inequitable to recover the amount from retireal benefits of the petitioner. The wrong pay fixation is not on account of any fraud or misrepresentation by the petitioner. The petitioner has retired from service. At the time of retiremnet petitioner was holding class-III post. All the parameters laid down by the Apex Court in the case of State of Punjab V/s Rafiq are attracted in the present case.

6] In the light of the above, the order directing recovery from the retireal benefits of the petitioner is quashed and set aside. If any amount is recovered pursuant thereto, the same be refunded to the petitioner within a period of four months from today.

7] As far as recovery of fine is concerned, the respondent shall verify the record. If after verification it is found that the fine amount has been recovered (set aside in appeal) then same shall also be refunded to the petitioner within four months. Writ Petition is accordingly disposed of. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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