

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

25 WRIT PETITION NO.3739 OF 2018

SHEELA MUKUNDRAO PURANIK

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner: Mr Manjramkar Milind A  
AGP for Respondents State: Mr A. B. Chate  
Advocate for Respondent No.5: Mr. Deepak P. Bakshi

**CORAM : S. V. GANGAPURWALA &  
A. M. DHAVALA, JJ.**

**DATE : 15th April, 2019**

PER COURT :

1. Mr Manjramkar, learned Advocate for the petitioner submits that the present petition is limited to the extent of recovery claimed by the respondents and non release of gratuity amount.

2. Mr. Bakshi, learned Advocate for Respondent No.5 submits that the petitioner had given undertaking that if excess amount is paid, then recovery can be claimed by the department from the retiral benefits.

3. It is not disputed that the petitioner has retired from service and recovery is claimed from the retiral benefits. The petitioner was working as Class-III employee. It would be inequitable to recover the amount from the retiral benefit. It would also cause

hardship to the retired employee, if the recovery is claimed from the retirement benefit.

4. The Apex Court, in the case of **State of Punjab Vs. Rafiq Masih (White Washer), reported in 2015 (4) SCC 334** 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 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.

All the above parameters laid down by the Apex Court are applicable in the present case.

5. It appears that there was confusion amongst the authorities about whether the exemption could have been granted. Exemption was granted by the authority concerned. As the impugned order is challenged only to the extent of recovery, we pass the following order:

O R D E R

- i. The impugned order only to the extent of recovery, is quashed and set aside.
- ii. The respondents shall not deduct the amount from the retiral benefit of the petitioner on the ground of excess payment made and if the same is recovered, it would be paid back to the petitioner within a period of three months.
- iii. Writ Petition is accordingly disposed of. No costs.

(A. M. DHAVALA, J.)

(S.V. GANGAPURWALA, J.)

JPC