

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

WRIT PETITION NO. 9854 OF 2018

Raju Vinayak Bhadane

Petitioner..

Versus

The State of Maharashtra & Ors.

Respondents..

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Mr Avinash A. Khande, Advocate for the petitioner

Mr P. S. Patil, AGP for respondent/State

Mr C. D. Biradar, Advocate for respondent No. 3

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

DATE : 11TH JANUARY, 2019

ORAL ORDER:

1. Mr Khande, learned counsel for the petitioner submits that, the petitioner retired as a Civil Engineering Assistant on 31.05.2018. After his retirement, under order dt. 09.07.2018, re pay fixation has been done and recovery is claimed. The present petition is filed only to the extent of recovery claimed. The learned counsel relies on the judgment of the Hon'ble Apex Court in the case of *State of Punjab vs. Rafique Masih (WhiteWasher) etc.* reported in *AIR 2015 SC 696*.

2. The learned counsel for the respondents No. 2 to 5 submits that, in fact the petitioner had given an undertaking that if pay-

fixation is erroneously done, the recovery be claimed. He relies on the judgment of the Hon'ble Apex Court in the case of **High Court of Punjab & Haryana & Ors. vs. Jagdev Singh** reported in (2016) 14. SCC 267.

3. In the case of High Court of Punjab & Haryana vs. Jagdev Singh (supra), the employee therein was a Judicial Magistrate First Class and in light of that, the court had held that, recovery could be claimed.

4. In the present case, the petitioner was a Class-III employee. He retired on 31.05.2018 and after his retirement, on 09.07.2018 re-pay fixation has been done and recovery is claimed from the retiral benefits. The same would cause hardship to the petitioner. It is also accepted by the respondents that the recovery is claimed from the year 2006 onwards i.e. beyond five years. The parameters as laid down by the Hon'ble Supreme Court in the case of State of Punjab (supra) squarely apply to the present case. The same parameters are reproduced below.

12. 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.*

6. In the light of the above, the impugned order to the extent of recovery only is quashed and set aside. If any recovery is made pursuant to the impugned order, the same shall be refunded to the petitioner within a period of three months.

7. Writ Petition is disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE