

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10831 OF 2018

Laxmibai w/o Eknath Waghmare

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. G.N. Kulkarni, Advocate for Petitioner

Mr. K.B. Jadhavar, Assistant Government Pleader for
Respondent No. 1

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

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

DATE : 7th MARCH, 2019

ORAL ORDER:

1. The petitioner submits that the petition is limited to the extent that the recovery has been made on the ground that excess payment was made to the deceased husband of the petitioner.
2. We have heard Mr. Kulkarni, the learned Counsel for the petitioner.
3. Mr. Pulkundwar, the learned Counsel for the respondent Nos. 2 to 4 submits that erroneously excess amount was paid to the deceased husband of the petitioner.
4. In view of that, the respondent is entitled to recover the excess amount paid. The respondents are empowered to recover the excess amount wrongfully paid to the deceased husband of the

petitioner. The petitioner and the deceased husband of the petitioner were not entitled for unjust enrichment. The rules also permit the respondent to recover the same.

5. The issue involved is no longer res-integra. The excess payment was made to the deceased husband of the petitioner. The same is sought to be recovered from the petitioner. The deceased husband of the petitioner was working as a Village Development Officer Class-III post and from the retiral benefits that is sought to be recovered.

6. The Apex Court in case of ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer) reported in 2015 (4) SCC 334*** has laid down the following parameters.

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.

7. It is a fact that the hardship is caused to the petitioner by recovering the amount from the retiral benefits of the deceased husband of the petitioner.

8. The case of the petitioner falls within the parameters laid down by the Apex Court in case of State of Punjab (supra).

9. In light of the above, in case the amount is recovered by the respondents from the petitioner on account of excess amount paid to the deceased husband of the petitioner, then the same shall be refunded to the petitioner within a period of four months.

10. The Writ Petition is disposed of. No costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE