

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

WRIT PETITION NO. 10864 OF 2018

Vitthal S/o. Nathaji Mhaske ... Petitioner

Versus

Union of India & Ors. ... Respondents

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Mr Shrikrishna B. Solanke, Advocate for the petitioner

Mr S. B. Deshpande, ASGI for respondent No. 1

Mr V. B. Kulkarni, Advocate for respondents No. 2 & 3

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

DATE : 21ST JANUARY, 2019

ORAL ORDER:

. The petitioner had filed Original Application against the action of the respondent seeking recovery of Rs. 6,05,455/-. The Original Application was dismissed on the ground of jurisdiction.

2. We have heard Mr Solanke, the learned counsel for the petitioner and Mr Deshpande, learned ASGI for respondent No. 1. There is no dispute that the recovery claimed is in respect of the excess amount paid while calculating the pension in the year 2009. The petitioner retired in the year 2009. Because of wrong calculation

of Dearness allowance, the excess amount was paid to the petitioner and same is sought to be recovered. The judgment relied on by the petitioner in *State of Punjab vs. Rafique Masih (WhiteWasher) etc.* reported in *AIR 2015 SC 696* in the given facts of the case would not apply. The petitioner was a Class-II employee. So also it is not the case of wrong pay fixation but after retirement, due to wrong calculation the excess payment was made to the petitioner. It is submitted that the respondents are recovering said amount monthly. The respondents shall recover the amount as they were recovering earlier i.e. prior to putting on hold the recovery.

3. The petitioner also assails the notice dt. 29.08.2018 issued to him. The said notice issued on the basis of the directions issued by the Central Administrative Tribunal in Original Application No. 701/2016. On one hand, the Tribunal says that it does not have any jurisdiction to entertain the dispute and on the other, the directions are issued to the respondents to initiate action against grave misconduct.

4. In fact, when the petitioner had got the excess amount, he had retired from service and he was not an employee of respondents.

5. The action of recovery of payment of excess amount was

probably due to wrong calculation on the part of the respondents for which the petitioner cannot be held guilty. In light of the above, the notice dt. 29.08.2018 i.e. calling reply from him as to why action of misconduct should not be taken against him is set aside.

6. The writ petition is accordingly disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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