

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
57 WRIT PETITION NO.11173 OF 2018**

ASHA UTTAMRAO GANACHARI

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Vishwajit R. Jain (Kamboj), Advocate for the
Petitioner.

Mr. S. K. Tambe, AGP for Respondents-State.

Mr. Santosh B. Pulkundwar, Advocate for Respondent
Nos.2 to 5.

...

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

DATED : 26th FEBRUARY, 2019.

PER COURT:-

1. The petitioner was working as Auxiliary Nurse Midwives. The petitioner retired on attaining the age of superannuation as ANM on 30.09.2012. Under order dated 04.12.2012 directions were issued to deduct amount of Rs.1,09,740/- from the amount of gratuity on account of wrong pay fixation. The same is assailed.

2. Mr. Jain, learned counsel for the petitioner submits that the petitioner was working as Class-IV employee. The pay fixation was done in the year 1996 and amount was paid since then. The great hardship would be caused to the petitioner if the amount is recovered from the retiral benefit.

3. Mr. Pulkundwar, learned counsel submits that it was on account of wrong pay fixation the excess amount was paid to the petitioner. The respondent was entitled to recover the same from the retiral benefits. The unjust enrichment is caused to the petitioner.

4. It is not disputed that the petitioner was working as Class-IV employee. The amount sought to be recovered was paid prior to five years. The amount sought to be recovered is after retirement and from the retiral benefits. The hardship would be caused to the petitioner if the amount is recovered from the retiral benefits. The case of the petitioner is within the parameters laid down by the Apex Court in a case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** reported in (2015) 4 SCC 334. It also appears that the petitioner had not misrepresented while pay fixation was done.

5. In light of the above, the impugned order to the extent of seeking recovery is quashed and set aside. The amount recovered from the gratuity/retiral benefits shall be repaid to the petitioner within a period of three months.

6. Writ Petition is disposed of. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE