

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

WRIT PETITION NO. 1022 OF 2018

Ashok Anandrao Deshmukh .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Mahendra B. Kolpe, Advocate for the Petitioner.
Shri S. B. Yawalkar, Addl.G.P. for the Respondent No. 1.
Shri P. R. Tandale, Advocate for Respondent Nos. 2 and 3.

**CORAM : S. V. GANGAPURWALA AND
AVINASH G. GHAROTE, JJ.
DATE : 18TH NOVEMBER, 2019.**

FINAL ORDER :

. Mr. Kolpe, the learned advocate for the petitioner submits that, he does not press prayer clause "B".

2. The learned counsel further submits that, recovery is claimed on the basis of wrong pay fixation. The petitioner was Class III employee. He has taken voluntary retirement.

3. Mr. Tandale, the learned counsel for respondent Nos. 2 and 3 submits that, the circular is applicable only to those who are at the verge of retirement. The petitioner has taken voluntary retirement.

4. It is not disputed that, the petitioner is a Class III

employee. He has already taken voluntary retirement at the age of 57 years, meaning that he was at the verge of retirement, even as per the date of his regular superannuation.

5. In a case of High Court of **High Court of Punjab and Haryana Vs. Jagdev Singh** referred to supra, the aggrieved party therein was a Judicial Magistrate First Class, whereas petitioners in these cases are Class - III employees. The recovery claimed is regarding payment made prior to five years of the impugned action. The petitioners are at the verge of retirement and hardship would be caused to them if recovery is claimed. The Apex Court in the case of **State of Punjab Vs. Rafiq Masih** supra has laid down 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.

6. The cases of petitioner is within the ambit and purview of parameters laid down by the Apex Court in the above said judgment.

7. In the light of the above, we pass following order.

8. The respondent Nos. 2 and 3 shall calculate the pension and give pensionary benefits to the petitioner as per the pay fixation done by respondents as the same is not challenged. As far as the scheme of time bound promotion is concerned, the respondents may take decision on the application of the petitioner, expeditiously and preferably within a period of four (04) months from today. The respondents shall not claim recovery from the petitioner on account of wrong pay fixation.

9. In view of the above, the writ petition is disposed of. No costs.

[AVINASH G. GHAROTE, J.] [S. V. GANGAPURWALA, J.]

bsb/Nov. 19