

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

WRIT PETITION NO. 11699 OF 2018

Nanasaheb Sandu Patil

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Vitthal G. Salgare, Advocate for the Petitioner.

Shri P. S. Patil, Addl.G.P. for Respondent Nos. 1 to 3.

The Respondent Nos. 4 and 5 served – absent.

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

DATE : 20TH MARCH, 2019.

FINAL ORDER :

. The petitioner is a retired employee. After retirement recovery is sought to be claimed from the petitioner on account of wrong pay fixation. The petitioner filed Original Application before the Maharashtra Administrative Tribunal against recovery claimed. The original application is dismissed. Aggrieved thereby present writ petition.

2. We have heard Mr. Salgare, the learned counsel for the petitioner and Mr. Patil, the learned Additional Government Pleader for respondents/State.

3. The learned Additional Government Pleader relies on the judgment of the Apex Court in a case of High Court of Punjab and Haryana Vs. Jagdev Singh reported in (2016) 14 SCC 267, whereas Mr. Salgar, the learned advocate for the petitioner relies on the judgment of the Apex Court in the case of State of Punjab Vs. Rafiq Masih reported in AIR 2015 SC 696.

4. It is not disputed by either of the parties that, the petitioner was working as a Class III employee at the time of recovery claimed from the retiral benefit of the petitioner. The Apex Court in a 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.

5. It would be iniquitous to claim recovery from the retiral benefits of the petitioner more particularly when the petitioner is Class III employee and he is not guilty of any fraud or misrepresentation. In a case of High Court of Punjab and Haryana Vs. Jagdev Singh (supra), the employee therein was a Class I employee.

6. The facts of the present case are nearer to the case of State of State of Punjab Vs. Rafiq Masih (supra). The parameters as laid down by the Apex Court in a case of State of Punjab Vs. Rafiq Masih (supra) are attracted in the present case also.

7. In the light of the above, the impugned order passed by the Tribunal is quashed and set aside. So also order seeking recovery from the petitioner is quashed and set aside. If the recovery has been made from the petitioner, the same shall be refunded to the petitioner within a period of four (04) months from today. The writ petition is disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

bsb / March 19