

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

**WRIT PETITION NO. 12245 OF 2018**

Sunita Shripad Band

.. **Petitioner**

**Versus**

State of Maharashtra and another

.. **Respondents**

Mr. P. V. Barde, Advocate for the Petitioner.

Mrs. G. L. Deshapnde, A.G.P. for Respondent No. 1.

Mr. Pradeep V. Tapse Patil, Advocate for Respondent No. 2.

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

**DATE: 16<sup>th</sup> JANUARY, 2019**

**PER COURT :**

1. The petitioner assails communications dated 10.09.2018, 15.09.2018 and the order of recovery dated 18.09.2018 issued by respondent no. 2.

2. We have heard the learned counsel for the petitioner and the learned counsel for respondent no. 2.

3. It appears that departmental enquiry was

initiated against the petitioner. The notice was issued to the petitioner of compulsory retirement. The petitioner assailed the proceedings before the Labour Court. The matter came up before this Court. The learned Single Judge of this Court on 05.07.2018 in Writ Petition No. 9548 of 2017 observed that with a view to put an end to the litigation, the petitioner is awarded punishment of stoppage of one increment and all the impugned orders merged into the order of the learned Single Judge of this Court. It appears that thereafter the order is passed by respondent no. 2 deducting 5% of the amount of pension for a period of one year claiming recovery from the gratuity amount and further treating the suspension period as suspension period.

4. After the order is passed by this Court it was not permissible for the respondent to pass any further order of punishment. Moreover, as far as the recovery is claimed on account of the excess amount legitimately paid, after retirement it will

not be open for the respondent to claim the same. The petitioner was Class-III employee and already retired from service. The parameters as laid down by the Apex Court in case of **State of Punjab Vs. Rafiq Masih (White Washer) and others** reported in **(2015) 4 SCC 334** would squarely apply.

5. As far as suspension period is concerned, the same can be considered as leave period as per Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981.

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

7. The impugned order claiming recovery from the petitioner from the gratuity amount deducting 5% from the pension and treating suspension period as such are quashed and set aside. The suspension period shall be treated as leave period with or without pay considering his balance leave. The petitioner, as such, shall be paid the pension and

the amount of gratuity so also the retiral benefits accordingly. The same shall be paid within a period of three (3) months from today.

8. The writ petition accordingly stands disposed of. No costs.

**[A. M. DHAVAL, J.]      [S. V. GANGAPURWALA, J.]**

marathe