

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

60 WRIT PETITION NO.12228 OF 2018

DATTATRYA RAMA YAMPALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner :Mr. Bhumkar R.p.
AGP for Respondents State: Mrs. A. V. Gondhalekar
Advocate for Respondents 2 to 4 : Mr.Reddy Ajinkya

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

DATE : 25th February, 2019

PER COURT :

1. The petitioner assailed the recovery sought to be made against him.

2. We have heard Mr. Bhumkar, learned Advocate for the petitioner.

3. Mr. Reddy, learned Advocate for respondents 2 to 4 submits that the petitioner cannot be unjustly enriched on account of the wrong payment made to him. According to the learned counsel, if by mistake erroneous payment has been made, the employer is entitled for recovery from recipient of excess payment. The learned counsel relied on the decision Supreme Court in case of **Chandi Prasad Uniyal Vs. State of**

Uttarakhand and others, reported in (2012) 8 Supreme Court Cases 417.

4. Learned Counsel for the petitioner relied on the judgment of the Apex Court in the case of State of Punjab Vs. Rafiq Masih (White Washer), reported in 2015 (4) SCC 334. It is not disputed that payment on account of wrong pay fixation has been made to the petitioner in the year 1996. Recovery is claimed when the petitioner was at the verge of retirement. The petitioner was working as class 4 employee. It would cause hardship to the petitioner, if the recovery is made at the fag end of his career. The case of the petitioner is covered by the judgment of the Apex Court of **State of Punjab Vs. Rafiq (supra)**, wherein the Apex Court laid down the 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. Considering the above, the impugned order to the extent of recovery, is quashed and set aside. Writ Petition is accordingly disposed of. No costs.

(A. M. DHAVALA, J.)

(S. V. GANGAPURWALA, J.)

JPC