

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

74 WRIT PETITION NO.13544 OF 2018

RAMESH NANA TORNE AND ANR.

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Shri Amol S. Gandhi
AGP for Respondents / State : Smt G.L. Deshpande

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CORAM : S V GANGAPURWALA & AVINASH G. GHAROTE, JJ.

Dated: November 05, 2019

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PER COURT :-

1. Mr Gandhi, the learned advocate for the petitioners submits that, the petitioners retired on attaining the age of superannuation on 30.04.2017 and 31.12.2015. The amount is recovered from the gratuity amount on the ground of wrong pay fixation. The learned advocate relied upon the judgment of the Apex Court in the case of **State of Punjab & Ors Vs. Rafiq Masih (White Washer)** reported in **2015 (4) SCC 334**.

2. Mrs Deshpande, the learned AGP submits that, because of wrong pay fixation excess amount was paid to the petitioners and the same is recovered from the retiral benefits. The respondents are authorized to recover the same from the retiral benefits. The Maharashtra Civil Services Pension Rules also permit the respondents to recover the excess amount wrongly paid. Thus, it was noticed during the payment of the pension amount that, the petitioners are the beneficiaries of the wrong pay fixation. In view of that, the amount is rightly recovered, more particularly as per provisions of Rule 132 (3)(b).

3. We have considered the submissions.

4. It is not disputed that the petitioners no.1 and 2 are the Group 'C' employees. The recovery is in respect of the amount paid much earlier. The petitioners would suffer hardships if the amount is recovered from the retiral benefits of the petitioners. The Apex Court in the case of Raffiq (supra) has laid down following parameters.

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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. All the parameters laid down by the Apex Court in the above referred judgment are satisfied.

6. In light of the above, the respondents shall refund the amount recovered from the gratuity of the petitioners within four months from today.

7. Writ Petition is accordingly allowed. No costs.

[AVINASH G. GHAROTE]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Gajanan