

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14209 OF 2018

DNYANDEV PANDHARINATH TAGARE ...PETITIONER

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS ...RESPONDENTS

Mr. B.V. Thombre, Advocate for Petitioner
Mr.V. M. Kagne, AGP for Respondents-State
Mrs. M.A. Deshpande, Advocate for Respondent No. 3 to 5

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 26th AUGUST, 2019

ORAL ORDER:

1. Mr. Thombre, the learned Counsel for the petitioner submits that the petitioner is challenging the impugned order only to the extent of recovery claimed.

2. The learned Counsel submits that after the petitioner has retired from service, the recovery is claimed on the ground of additional increments granted erroneously. According to the learned Counsel, the petitioner was not responsible for grant of additional increments. The respondent on its own volition has fixed the pay scale granting additional increment. The petitioner never

misrepresented. Hardship would be caused if the amount is recovered from the retrial benefits of the petitioner.

3. Mrs. Deshpande, the learned Counsel for the respondent Nos. 3 to 5 submits that in view of Rule 134-A of the Maharashtra Civil Services (Pension) Rules, the respondents have right and authority to recover the amount if erroneously paid in excess. The petitioner would be unjustly enriched, if the excess amount is allowed to be retained by the petitioner.

4. The Apex Court in a case of **State of Punjab Vs. Shaikh Rafiq Masiha reported in 2015 (4) Page 334**, has laid down following parameters.

18. 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, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the

employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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 is not disputed that the petitioner was working as Class-III employee. The recovery is claimed from the retiral benefits of the petitioner. It is also not disputed that the petitioner had never misrepresented for pay fixation. Hardship would be caused to the petitioner, if the recovery is claimed from the retiral benefits of the petitioner.

6. Considering all the aforesaid aspects of the matter, the parameters as laid down by the Apex Court in the case of **State of Punjab Vs. Shaikh Rafiq Masiha** cited (supra) are satisfied.

7. In light of the above, the impugned order to the extent of recovery claimed is quashed and set aside.

8. The recovery if made by the respondents, shall be refunded to the petitioner, expeditiously and preferably, within a period of four months from today.

9. The writ petition is disposed of. No costs.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

mta