

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 256 OF 2019

Ashok s/o Sheshrao Jondhale

...Petitioner

Versus

Superintendent of Police,
Hingoli District, Hingoli and Anr.

...Respondents

Mr. G.N. Kulkarni (Mardikar), Advocate for Petitioner
Mrs. P.V. Diggikar, Assistant Government Pleader for
Respondent Nos. 1 and 2

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

DATE : 7th MARCH, 2019

ORAL ORDER:

1. The recovery is claimed from the retiral benefits of the petitioner. The petitioner is retired as Police Sub Inspector (P.S.I.). Against the order of recovery, the petitioner filed Original Application before the Tribunal. The Tribunal dismissed the Original Application. Aggrieved thereby, the present Writ Petition.

2. Mr. Kulkarni, the learned Counsel for the petitioner submits that the post of P.S.I. is non-gazetted Group-C post. In view of that, the Judgment of the Apex Court in the case of ***State of Punjab and Ors. Vs. Rafiq Masih (White Washers) reported in (2015) 4 SCC 334*** would squarely apply.

3. According to the learned Counsel, hardship would be caused to the petitioner and the recovery is made from the retiral benefits.

4. The learned Assistant Government Pleader submits that the post of P.S.I. is Group-B post though is not gazetted one. The Judgment in case of ***State of Punjab and Ors. Vs. Rafiq Masih (White Washers)*** would not apply. The Tribunal has rightly considered the said aspect.

5. It appears that the post of P.S.I. is a non-gazetted post and according to the respondents, the same is Group-B post.

6. We are only considering the case from the point of equity. The amount sought to be recovered from the petitioner is on account of the wrong pay fixation since 13.11.1998. Certainly, the petitioner was not responsible for the wrong pay fixation done and at that time, the petitioner was Group-C employee being a Constable and the petitioner was promoted as P.S.I. on 19.10.2013.

7. To adjust the equities, we modify the order of the Tribunal and direct that recovery shall not be made from the petitioner on account of excess payment made till 19.10.2013. The respondents may recover the amount in respect of the excess payment on account of wrong pay fixation for the period after the petitioner was promoted as P.S.I. and till the date of his retirement.

8. It is submitted that the amount was already recovered by the respondents. The respondents shall refund the amount recovered on account of wrong pay fixation done for a period from 13.11.1998 to 19.10.2013. The same shall be refunded within a period of three months.

9. The Writ Petition is accordingly disposed of. No costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

mta