

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

WRIT PETITION NO.1461 OF 2019

Hirabai Gopalrao Sonawane

.. Petitioner

Versus

State of Maharashtra and ors.

.. Respondents

Mr M.K. Bhosle, Advocate for petitioner

Mr S.G. Karlekar, A.G.P. for respondent no.1

Mr S.R. Dheple, Advocate for respondents no.2 and 3

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 20th February 2020

ORAL ORDER :

1. Mr Bhosle, learned Advocate for petitioner submits that the petitioner retired as Auxiliary Nurse Midwife (ANM) on 31.12.2013. Just prior to retirement, the respondents illegally revised the pay-scale of the petitioner by reducing the pay-scale of 5th and 6th pay commission with retrospective effect and passed order of recovery of excess amount from pension of the petitioner. The benefit of higher pay-scale of the petitioner was granted to the petitioner from 24.2.1998. The Advocate for the petitioner submits that the petitioner on the date of retirement was working as Class-III employee.

2. Mr Dheple, learned Advocate for respondents no.2 and 3 submits that the petitioner had given an undertaking that if some flaw is found in the pay-scale, the same would be returned back. The undertaking is dated 9.2.1999. Learned Advocate further submits that if the excess amount has been paid to the petitioner, then as per Section 134-A of the Maharashtra Civil Services (Pension) Rules, the recovery can be made.

3. Learned Counsel for respondents no.2 and 3 relies on the judgment of this Court at Nagpur Bench in Writ Petition No.4919 of 2018 dated 23.7.2019.

4. We have considered the submissions. It is not disputed that the petitioner was given benefit of assured career progress scheme on 24.2.1998 itself. On attaining superannuation, petitioner stood retired on 31.12.2013. The recovery is made from the retiral benefits of the petitioner. The petitioner on the date of retirement was working as Class-III employee. The Apex Court in case of **State of Punjab and ors., vs. Rafiq Masih (White Washer) and ors.**, reported in **(2015) 4 SCC 334** has laid down following parameters 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. The undertaking is after the benefit was already given to the petitioner. The same is one year after the benefit given to the petitioner.
6. All the parameters laid down by the Apex Court in case of **State of Punjab and ors., vs. Rafiq Masih** (supra) are attracted in the present case. It would be inequitable to recover the amount from the retiral benefits.
7. This Court also in the Judgment dated 22.12.2017 in Writ Petition No.4616 of 2016 with connected Writ Petitions to which one of us (S.V. Gangapurwala, J.) was member, has observed that such a recovery would not be permissible.
8. In light of the above, the impugned order only to the extent of recovery is quashed and set aside. The respondents shall return the amount recovered from the petitioner from the retiral benefits expeditiously, preferably within six months.
9. Writ Petition partly allowed accordingly. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)

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