

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

WRIT PETITION NO. 2475 OF 2019

Chitralekha Chandrasen Pawar

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Ashwin V. Hon, Advocate for Petitioner.

Mr. S. G. Karlekar, AGP for Respondent No. 1.

Mr. Avinash D. Aghav, Advocate for Respondent No. 2.

**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATED : 08th JANUARY, 2020.

PER COURT:-

. The respondents have recovered the amount from the gratuity payable to the petitioner on the ground excess amount was paid on account of the wrong pay fixation.

2. Mr. Aghav, learned counsel for the respondent No. 2 submits that the petitioner had given an undertaking on 16.05.2009 that if in future some mistake is noticed in pay fixation, the amount would be recovered by the department. In view of that, the respondent No. 2 was within its right to recover the amount.

3. It is not disputed that at the time of retirement the petitioner was working as a class-III employee. The recovery is claimed after the petitioner has retired and from the retiral benefits payable to the

petitioner. The recovery is claimed on account of pay fixation done since the year 1996 onwards. The parameters as laid down in the judgment of the Apex Court in a case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334*** are as under :

“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. But that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise 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."

4. All the parameters laid down in a case of ***State of Punjab and others Vs. Rafiq Masih (White Washer)*** supra are satisfied in the present case. The recovery is claimed for a period even prior to the undertaking being given. Moreover, the petitioner was a Class-III employee. The recovery is claimed from the retiral benefits and for a period since 1996 till date of retirement i.e. 31.01.2016. The same is not permissible.

6. In the light of the above, the impugned communication is quashed and set aside. In case, the respondents have recovered the amount of Rs. 3,45,988/- (Rupees Three Lakh Fourty Five Thousand Nine Hundred Eighty Eight only) from the petitioner, the same shall be refunded to the petitioner expeditiously and preferably within a period of four (04) months from today.

7. Writ petition accordingly is disposed of. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.