

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

WRIT PETITION NO.7319 OF 2009

Manikrao s/o Baswanappa Nimbalkar,
Age 65 years, Occ. Retiered Engineer
(PWD), Beed, Tq. Beed, Dist. Beed.

VERSUS

1. The State of Maharashtra,
Through Secretary Public Works Department,
Mantralaya, Mumbai.
2. Superintending Engineer,
P.W.D. Osmanabad.
3. The Executive Engineer,
Public Work Department, Beed.
4. The Accountant General,
Maharashtra-II, Nagpur.

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Advocate for Petitioner : Mr. Biradar R.D.
AGP for Respondents : Mr. S.P. Tiwari.

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

DATE : 17/01/2020

ORAL JUDGMENT : (Per : S.V. Gangapurwala, J.)

Rule. Rule made returnable forthwith. With the consent of the parties, the matter is taken up for final hearing.

2 We have heard Mr. Biradar, learned advocate for the petitioner and the learned A.G.P.

3. The petitioner is assailing the order passed by the Maharashtra Administrative Tribunal thereby dismissing the original application filed by the petitioner. It appears that the petitioner did not pass the Marathi examination and the increments granted to the petitioner were withheld. The recovery was claimed. The contention of the petitioner is that as per Government Resolution dated 08.05.2003 the petitioner was exempted. The petitioner was appointed as 'Technical Assistant' and it was not mandatory for him to pass the said examination. The petitioner has retired from service on 31.05.2003.

4 The Tribunal has observed that the exemption was granted to such employees who have retired in the period 01.01.1996 to 30th April 1996. In view of that the application is rejected.

5. This Court on 11.04.2011 admitted the writ petition and granted interim relief in terms of prayer clause 'C'. Prayer clause 'C' reads thus:

“During the pendency of this writ petition the respondent authority be directed not to recover the amount from the petitioners pension as per the letter dated 09.10.2003 issued by the Executive Engineer Public Work Department, Beed”

6. It is trite that recovery cannot be claimed from pensionable/retiral benefits more particularly from Class-III and Class-IV employee. The petitioner was Class-III employee. Reference can be made to a judgment of the Apex Court in case of *The State of Punjab Vs. Rafiq, reported (2015) 4 SCC 334*.

7. In the light of that the rule is made absolute in terms of interim orders passed. No costs.

(MANGESH S. PATIL, J.)

(S. V. GANGAPURWALA, J.)

mkd