

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

WRIT PETITION NO. 1500 OF 2018

Tukaram s/o Dulba Gaikwad
Age : 64 years, Occ : Pensioner,
R/o. Narangal
Tq. Degloor and Dist. Nanded.

... PETITIONER

VERSUS

1. The State of Maharashtra
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
2. The Chief Executive Officer,
Zilla Parishad Nanded.
3. The Block Development Officer,
Panchayat Samiti Biloli,
Tq. Biloli, Dist. Nanded.

... RESPONDENTS

Mr. Girish N. Kulkarni (Mardikar), Advocate for the
petitioner
Mr. A. R. Kale, AGP for the respondent/State
Mrs. Y. M. Kshirsagar, Advocate for respondent Nos. 2
and 3.

**CORAM : Z. A. HAQ &
S.M. GAVHANE, JJ.**

DATED : 24.02.2020

ORAL JUDGMENT (PER : S.M. GAVHANE, J.)

. Heard learned advocates for parties.

02 Rule. Rule made returnable forthwith.

03. By this petition, the petitioner has prayed to

issue writ of mandamus directing respondents to refund an amount of Rs. 57,277/- with interest.

04. Learned advocate appearing for the petitioner submitted that petitioner was appointed as Muster Assistant with Zilla Parishad, Nanded on 24/08/1981. As per policy of the Government, he came to be absorbed on the post of Peon (Class "D" category) in Health Department of Zilla Parishad, Nanded on 21/04/1997. Thereafter, on 01/12/2006 as per qualification of the petitioner, he was absorbed in class "C" category. Respondent No. 3 issued communication dated 17/12/2008 directing the petitioner to deposit Rs. 57,277/- as excess payment was made to petitioner and respondents have also deducted said amount from the petitioner from his salary of January, 2009 to June, 2010 and from the pensionary benefits of the petitioner. Petitioner has retired from the services on 31/03/2011. It is submitted that without notice and enquiry the respondents have withdrawn the benefit of particular pay scale given to him.

05. Learned advocate for petitioner further

submitted that petitioner being class-III employee, the amount of excess payment cannot be recovered from him as he has retired and as said excess payment has been made 5 years before the communication dated 17/12/2008 i.e. order of recovery and therefore, the petitioner is entitled for refund of the amount recovered from him. To support his submission learned advocate for the petitioner has relied upon decision of the Apex Court in the case of *State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others (2015)4 Supreme Court Cases 334* and in the said decision in paragraph No. 18, it was observed 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. Be that as it may, based on the decision 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."

. So also, the learned advocate for the petitioner has relied upon the decision of this Court (Coram : S. V. Gangapurwala and V. K. Jadhav, JJ.) dated 2nd July, 2015 in Writ Petition No. 7814 of 2014 and connected writ petitions and relying upon the decision of the Apex Court in the case of ***State of Punjab*** (Supra) in paragraph Nos. 6 and 7, it was observed thus:

"6. The case of the present petitioners would be squarely covered by the judgment in the case of *State of Punjab* (Supra). Some of the petitioners have retired and some are on the verge of retirement. The recovery also is for a period beyond 5 years, as such the present case is covered by eventualities as laid down in paragraph nos. 12(ii) and (iii) of the judgment of Apex Court in the case of *State of Punjab* (referred supra).

7. In the light of the above, the writ petitions are allowed. The impugned orders claiming recovery against the petitioners

are quashed and set aside. In case the respondents, pursuant to the said orders of recovery, have recovered some amount from the petitioners, then the respondents shall refund the said amount to the petitioners expeditiously and preferably within a period of six (06) months."

06. Learned AGP appearing for respondent No. 1 supported the order of recovery of amount from the petitioner.

07. Learned advocate appearing for respondent Nos. 2 and 3 referring the affidavit-in-reply submitted on behalf of respondent No. 2 that at the time of verification of original service book of the petitioner for fixation of his pay in class III cadre, it was found that the pay of the petitioner at Rs. 2720/- was wrongly fixed by the Medical officer, Primary Health Centre, Jaldhara, Taluka Kinwat on 22/04/1997 and therefore, the pay fixation of the petitioner was corrected and as such, it was found that an excess amount of Rs. 57,277/- was paid to the petitioner during the period from 01/04/1997 to 30/11/2008 and therefore, excess amount paid to the petitioner has been rightly recovered and respondent No. 2 has power to recover the same in view of the provisions of Rule 132 of the Maharashtra Civil

Services (Pension) Rules, 1982. Thus, learned advocate has prayed to dismiss the petition.

08. There is no dispute that the petitioner was initially appointed as Muster Assistant in Zilla Parishad, Nanded on 24/08/1981. As per policy of the Government, he was absorbed on the post of Peon (class "D" category) in Health Department of Zilla Parishad Nanded and thereafter as per his qualification on 01/12/2006 he was absorbed in class "C" category. Thus, it is clear that the petitioner was class-III employee in Zilla Parishad, Nanded and he retired on attaining the age of superannuation on 31/03/2011. It is clear from the reply affidavit of respondent No. 2 and submissions made on behalf of respondent Nos. 2 and 3 that pay fixation of petitioner in class-III cadre was fixed on 22/04/1997 and excess payment was made to the petitioner during 01/04/1997 to 30/11/2008. There is no dispute that said excess amount was recovered from the petitioner from January, 2009 to June, 2010. Thus, case of the petitioner would be squarely covered by the eventuality No.(i) referred to above, laid down by the Apex Court in the case of ***State of Punjab*** (Supra), as

petitioner is class-III employee. Therefore, petitioner is entitled for refund of the amount.

09. Therefore, the petition is allowed. The respondents shall refund the amount of Rs. 57,277/- to the petitioner expeditiously and preferably within a period of 06 months.

10. Rule is made absolute in the above terms. No costs.

[S.M.GAVHANE,J.]

[Z. A. HAQ,J.]