

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

999 WRIT PETITION NO.6005 OF 2021

SUNITA JANARDHANRAO ARTHAMWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Ms. Joslyn Anthony Menezes.

GP for Respondent/State: Mr. D. R. Kale

Advocate for Respondent Nos.2, 3 & 6 : Mr. Ajit B. Kadethankar.

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CORAM : **S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATE : 06th October, 2021.

P.C.:

. The learned counsel for petitioner submit that the petitioner is assailing impugned action of the respondents to the extent of recovery claimed.

2. According to the learned counsel on account of re-pay fixation done by respondents recovery is claimed by the respondents which is illegal. The learned counsel submits that, petitioner has retired and recovery is claimed in respect of payment made more than five years prior to the impugned action. According to learned counsel hardship would be caused to petitioner, if the recovery is claimed.

3. Mr. Kadethankar, learned advocate for the respondent/Zilla Parishad submits that, petitioner has given an undertaking that in case pay fixation is found to be wrongly done, then respondents can claim recovery. In that case the respondents are entitled to claim recovery. The learned counsel rely on the judgment of the Apex Court in a case of High Court of Punjab and Haryana Vs. Jagdev Singh reported in *(2016) 4 SCC 267*.

4. The learned counsel for petitioner relies on the judgment of the Apex Court in a case of State of Punjab Vs. Rafiq Masih reported in *AIR 2015 SC 696*.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. In a case of High Court of Punjab and Haryana Vs. Jagdev Singh referred to supra, the aggrieved party therein was a Judicial Magistrate First Class, whereas petitioners in these cases are Class – III employees. The recovery claimed is regarding payment made prior to five years of the impugned action. The petitioner has retired and hardship would be caused to him if recovery is claimed. The Apex Court in the case of State of Punjab Vs. Rafiq Masih supra has laid down following parameters.

(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.

7. The case of petitioner is within the ambit and purview of parameters laid down by the Apex Court in the above said judgment.

8. In the light of the above, we pass following order.

9. The impugned action of respondents to the extent of recovery only is quashed and set aside. The writ petition accordingly is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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