

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
934 WRIT PETITION NO.1050 OF 2021**

DISTRICT MALARIA OFFICER NANDED
AND ANOTHER

..PETITIONER

VERSUS

BALIRAM DEVBA WAGHMARE

..RESPONDENT

...

Mr. S. R. Yadav Lonikar, Advocate for the
Petitioner.

...

AND

956 WRIT PETITION NO.1072 OF 2021

DISTRICT MALARIA OFFICER AND ANOTHER..PETITIONERS

VERSUS

SAWAIRAM DHENA RATHOD

..RESPONDENT

...

Mr. P. K. Lakhotiya, Advocate for the Petitioners.

...

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

DATED : 20th JANUARY, 2021.

PER COURT:-

1. The petitioners are assailing the judgment and order passed by the Maharashtra Administrative Tribunal allowing the original complaint filed by petitioners to the extent of quashing the recovery amount.

2. The learned A.G.Ps. for petitioners submits that erroneously wrong pay fixation was done in case of respondents. Instead of fixing

their pay in the scale of 4000-6000, the same was fixed in the scale of Rs.4500-7000. In view of that the pay of respondents was fixed as Rs.4500/- instead of Rs.4200/-. The same was done in the year 2003. Excess amount was paid. The mistake was noticed and a year before their retirements, respondents were directed to refund the amount. The respondents had given an undertaking at the relevant time that if excess amount is received by them on account of wrong pay fixation the petitioners are entitled for recovery. The learned counsel relied on the judgment of the Apex Court in the case of **High Court of Punjab and Haryana and others Versus Jagdev Singh** reported in 2016 (14) SCC 267 to contend that if an undertaking has been given by an employee and is beneficiary of erroneous pay fixation, the same can be recovered.

3. We have considered the submissions canvassed by the learned A.G.P.

4. Accepting the case of petitioners that the erroneous pay fixation was done in the year 2003 by fixing pay at Rs.4500/- instead of Rs.4200/-, the recovery of the same was sought when respondents were on the verge of retirement.

5. In the case of **High Court of Punjab and Haryana and others Versus Jagdev Singh** (supra) the employee therein was a Civil Judge viz Class-I

employee. In the present case the employee is a Class-III employee. The respondents were on the verge of retirement. Naturally, the hardship would be caused if the recovery is made from the pensionary benefits. The recovery was for a period of more than five years. The case of respondents is squarely covered under the parameters laid down by the Apex Court in a case of **Punjab and Others Vs. Rafiq Masih** (supra). The same can be reproduced 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 decisions referred to hereinabove, we may, as a ready reference, summarize 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."

6. In view of the above, the Tribunal has not committed any error in passing the impugned order.

7. In light of that, Writ Petitions are dismissed. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE