

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

WRIT PETITION NO. 7741 OF 2021

Gafar Ali Hyder Ali

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Girish N. Kulkarni (Mardikar), Advocate for the Petitioner.

Mrs. M. A. Deshpande, Addl. G. P. for Respondent No. 1.

Mr. S. B. Pulkundwar, Advocate for Respondent Nos. 2 to 6 and added respondent.

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

DATED : 16th JULY, 2021.

PER COURT :-

. At the request of learned counsel for the petitioner leave to add Education Officer (Primary) as a party respondent.

2. The learned Addl. G. P. accepts notice for respondent No. 1.
Mr. Pulkundwar, learned counsel accepts notice for respondent Nos. 2 to 6 and added party respondent.

3. In this matter, the petitioner assails the orders claiming recovery from him on account of wrong pay fixation.

4. Mr. Kulkarni, the learned counsel for petitioner, strenuously

contends that recovery in this matter is beyond five (05) years. The petitioner has taken voluntary retirement on 30.11.2019. The learned counsel submits that in such case, recovery cannot be claimed against the petitioner even assuming that the pay fixation was wrong. According to the learned counsel, the pay fixation was not on account of any misrepresentation on the part of the petitioner. In such case, recovery cannot be claimed. The learned counsel for the petitioner placed reliance on the judgment of the Apex Court in a case of *State of Punjab and others v/s. Rafiq Masih (White Washer) dated 18.12.2014*.

5. The learned Addl. G. P. and Mr. Pulkundwar, learned counsel for Zilla Parishad submit that wrong pay fixation was done and wrongly excess payment has been paid to the petitioner. As such, respondents have every right to recover the same.

6. It is not disputed that the petitioner has taken voluntary retirement on 30.11.2019. It is also not disputed that recovery claimed is beyond five (5) years. The Apex Court, in a case of *State of Punjab* (supra) in paragraph no. 12, has observed as under :

“12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (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 the present petitioner would be squarely covered by the judgment in the case of State of Punjab (Supra). The petitioner has taken voluntary retirement on 30.11.2019. 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).

8. In the light of the above, the writ petition is allowed. The impugned orders claiming recovery against the petitioner are quashed and set aside. In case the respondents, pursuant to the said orders of recovery, have recovered some amount from the petitioner, then the respondents shall refund the said amount to the petitioner expeditiously and preferably within a period of six (06) months.

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

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.