

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

946 WRIT PETITION NO.9029 OF 2017

MANGALRAO SHRIDHARRAO DESHPANDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Amit A. Mukhedkar.

AGP for Respondent/State: Mr. K. N. Lokhande.
...

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

DATE : 11th August, 2021.

P.C.:

. The petitioner is challenging the amount recovered from his retiral benefits on the ground that excess salary was paid to the petitioner while in service.

2 Mr. Mukhedkar, learned counsel submits that the pay fixation was done by the respondents. The petitioner had never misrepresented or played fraud upon the respondents. The recovery of amount is for the period prior to five years of his retirement. The petitioner retired as Class-III employee. The learned counsel relies on the judgment of the Apex Court in State of Punjab and others Vs. Rafiq Masih (White Washer) and others, reported in, (2015) 4 Supreme

Court Cases 334. According to the learned counsel, the respondents could not have recovered the amount from the retiral benefits.

3 The AGP submits that the excess amount was paid to the petitioner on account of wrong pay fixation done. The learned AGP submits that the respondents are entitled to recover the amount in view of the provisions of the Maharashtra Civil Services (Pension) Rules, 1982.

4 We have considered the submissions.

5 It is not disputed that the petitioner, at the time of retirement was working as Class-III employee. The recovery is in respect of the payment made to the petitioner five years prior to his retirement. The petitioner had never misrepresented with the respondents. The pay fixation was done at the behest of the respondents. It would be inequitable to direct recovery at this, from the retiral benefits.

6 The Apex Court in the case of *Rafiq* (supra) has held 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, 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 All the aforesaid parameters laid down by the Apex Court are fulfilled in the present matter.

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

ORDER

- I. The respondents shall refund the amount of Rs.44,715/- to the petitioner within three months.
- II. The writ petition is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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