

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

WRIT PETITION NO. 9729 OF 2021

Prakash Devsing Rathod
Age : 61 years, Occu. Retired,
R/o Amne (Khurd), Tq. Mahagaon
Dist. Yevatmal

.. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
General Administrative Department
Mantralaya, Mumbai – 32.
 2. The Chief Executive Officer
Zilha Parishad, Nanded
 3. The Deputy Account & Finance Officer
Zilha Parishad, Nanded
 4. The Medical Officer
Primary Health Center
Evaleshwar, Tq. Mahur Dist. Nanded
- .. Respondents

Mr. Vishwajeet R. Jain (Kamboj), Advocate for the Petitioner.
Mrs. V. N. Patil-Jadhav, AGP for Respondent No. 1.
Mr. S. B. Pulkundwar, Advocate for Respondent Nos. 2 to 4.

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

DATED : 23rd September, 2021.

ORAL JUDGMENT (*PER S. V. GANGAPURWALA, J.*) :-

. Rule. Rule made returnable forthwith. By consent of parties, the petition is heard finally at the stage of admission.

2. The petitioner seeks refund of the amount deducted from the retiral benefits on account of excess salary paid. It is not disputed that the petitioner was working as a Class III employee with respondent No. 2. An amount of Rs.1,65,885/- is deducted from the retiral benefits of the petitioner on the ground that the petitioner has paid excess amount due to wrong pay fixation.

3. We have heard the learned counsel for the petitioner and Mr. Pulkundwar, learned advocate for the respondent Nos. 2 to 4.

4. It is not the case of the respondents that the petitioner had misrepresented and because of the misrepresentation the respondents had fixed wrong pay scale. The pay scale was fixed by the respondents on their own accord. It is the contention of the respondents that from the date of appointment wrong fixation was done. The same was much more than five years prior to the date of recovery.

5. The petitioner would be put to hardship by the recovery of the said amount.

6. The judgment of the Apex Court in the case of ***State of Punjab and Ors. Vs. Rafik Masih (White Washer) etc.*** reported in ***2015 (4) SCC 334*** would be squarely applicable, wherein the Apex Court has laid down the 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. Excess payment has been made for the period in excess of five years before the order of recovery. The petitioner was Class III employee. The recovery is made from the retiral benefits. It would be iniquitous and harsh to recover the amount from the petitioner. All the parameters as laid down in the case of **Rafik** cited supra are applicable in the present case.

8. In the light of above, the impugned order to the extent of recovery is quashed and set aside. The respondents shall refund the amount of Rs. 1,65,885/- to the petitioner preferably within a period of three (03) months from today.

9. Rule is accordingly made absolute in above terms. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.