

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

33 WRIT PETITION NO.11036 OF 2021

HARI S/O MOHAN PATHE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH ITS SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. Arvind G. Ambetkar.

AGP for Respondent/State: Mr. A. R. Kale.
...

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

DATE : 04th October, 2021.

PER COURT:

1. The learned Counsel for the petitioners submits that, the petitioners were Class-III employees at the time of retirement and the recovery has been claimed by the respondents.

2. Heard the learned Counsel for the petitioners and the learned A.G.P.

3. The learned Counsel for the petitioners submits that this Court in the case of similarly situated persons, has set aside the order of recovery and directed to refund the amount of which recovery was made on account of wrong fixation.

4. The learned Counsel refers to the judgment and order

dated 18.07.2017 passed in Writ Petition No. 5367 of 2016 and the judgment and order dated 12.02.2018 passed in Writ Petition No. 695 of 2016.

5. It is not disputed that the petitioners are similarly situated as the petitioners in Writ Petition Nos. 5367 of 2016 and 695 of 2016, referred to above and are from the same Department.

6. The petitioners have retired from service and claim the refund of the amount recovered from them on account of wrong fixation. The petitioners rely on the judgment in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer), etc. reported in 2015(4) SCC 334***. The Apex Court in the said judgment 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. The petitioners were working on Class-III posts on the date of retirement. It would cause hardship to the petitioners if the said amount is recovered. All the parameters detailed in the judgment of the Apex Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.*** (supra) are attracted in the present matter.

8. In light of the above, the impugned order of recovery is quashed and set aside.

9. The petitioners shall give details of the amount recovered. The respondents shall verify the same from the record and if the amount is recovered from the retiral benefits on account of excess payment made, the same shall be refunded within a period of four (04)

months from the date the petitioners submitting the details and the chart.

10. The Writ Petition is accordingly disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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