

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

931 WRIT PETITION NO.12483 OF 2021

**MADHAV RAMRAO KAMBLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Mr.A.V.Patil Indrale
AGP for Respondent-State : Mr.K.N.Lokhande
Advocate for respondent nos.2 to 4 : Mr.S.B.Pulkundwar

...

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

DATE : 16.11.2021

P.C. :

1] At the request of the petitioner, leave to add Education Officer [Primary] as party respondent.

2] Learned AGP accepts notice for respondent no.1. Mr. S.B.Pulkundwar, learned counsel accepts notice for respondent nos.2, 3 and added party.

3] Recovery has been made from the pensionary benefits of the petitioner amounting to Rs.89,739/- on account of wrong fixation made. It is submitted that the petitioner, at the time of retirement, was working as a Headmaster, on class-III post. The recovery claimed is of period prior to 5 years. Hardship would be caused if the

recovery is made. It is submitted that fixation is not made on the basis of the misrepresentation on the part of the petitioner.

4] Mr.S.B.Pulkundwar, learned counsel for respondent nos. 2 to 4 submits that there is delay and laches on the part of the petitioner in challenging recovery on account of wrong fixation. If excess amount is paid, the same can be recovered as per Section 134-A of the Maharashtra Civil Services (Pension) Rules, 1982.

5] The Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer), etc. reported in 2015 (4) SCC 334** 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 employees, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employers right to recovery.

6] The case of the petitioner is squarely covered within aforesaid parameters.

7] In the light of that, the respondents shall refund the amount of Rs.89,739/-, recovered from the pensionary benefits of the petitioner on account of wrong fixation within a period of 4 months.

8] Writ Petition accordingly stands disposed of.
No costs.

[R.N.LADDHA, J.]

[S.V.GANGAPURWALA, J.]

DDC