

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

WRIT PETITION NO. 13450 OF 2019

Aabasaheb Dhondiram Kakde .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Mr. Sudhir K. Chavan, Advocate for the Petitioner.

Mr. P. K. Lakhotiya, AGP for Respondent No. 1.

Mr. N. U. Yadav, Advocate for Respondent Nos. 2 to 4.

**WITH
WRIT PETITION NO. 13473 OF 2019**

Taher Sandu Deshmukh .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Mr. Sudhir K. Chavan, Advocate for the Petitioner.

Mr. P. K. Lakhotiya, AGP for Respondent No. 1.

Mr. N. U. Yadav, Advocate for Respondent Nos. 2 to 4.

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

DATED : 29th September, 2021.

PER COURT:-

1. Mr. Chavan, learned counsel for the petitioners submits that, under order dated 23.09.2019, repay fixation has been done and recovery is claimed. The present petitions are filed only to the extent of recovery claimed. The learned counsel relies on

the judgment of the Hon'ble Apex Court in the case of ***State of Punjab Vs. Rafique Masih (WhiteWasher) etc.*** reported in ***AIR 2015 SC 696***.

2. The learned counsel for the respondents No. 2 to 4 submits that, in fact the petitioners had given an undertaking that if pay fixation is erroneously done, the recovery be claimed. He relies on the judgment of the Hon'ble Apex Court in the case of ***High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh*** reported in ***(2016) 14 SCC 267***.

3. In the case of High Court of ***Punjab & Haryana Vs. Jagdev Singh*** (supra), the employee therein was a Judicial Magistrate First Class and in light of that, the court had held that, recovery could be claimed.

4. In the present case, the petitioners were Class-III employees. After their retirement, on 23.09.2019 repay fixation has been done and recovery is claimed from the retiral benefits. The same would cause hardship to the petitioners. It is also accepted by the respondents that the recovery is claimed from the year 2006 onwards i.e. beyond five years. The parameters as laid down by the Hon'ble Supreme Court in the case of ***State of Punjab*** (supra) squarely apply to the present cases. The same

parameters are reproduced below.

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.*

6. In the light of the above, the impugned order to the extent of recovery only is quashed and set aside. If any recovery is made

pursuant to the impugned order, the same shall be refunded to the petitioners within a period of three months.

7. Writ Petitions are disposed of. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.