

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

WRIT PETITION NO. 1492 OF 2018

Narsing s/o Lalanna Chappalwar,
Age : 61 years, Occupation : Pensioner,
R/o Kalaskar Galli, Degloor,
Tq.Degloor, District Nanded.

...PETITIONER

-VERSUS-

1) The State of Maharashtra,
through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

2) The Chief Executive Officer,
Zilla Parishad, Nanded.

3) The Senior Accounts Officer,
Zilla Parishad, Nanded.

...RESPONDENTS

...
Advocate for the Petitioner : Shri Kulkarni Girish N. (Mardikar)
AGP for Respondent 1 : Shri S.R. Yadav Lonikar
Advocate for Respondents 2 and 3 : Shri Kadam Nitin S.
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**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 04th August, 2021

Oral Judgment (*Per Ravindra V. Ghuge, J.*):-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the remarks of

respondent No.3 dated 15.10.2015 vide which, the amount of Rs.1,22,487/- has been recovered from the petitioner's pensionary benefits on the ground that the said amount was paid in excess as a result of the mistake in fixation of his salary as a Junior Assistant between April, 1997 and June, 2015.

3. The petitioner joined employment in 1981. He stood superannuated on 30.09.2015. By the impugned remarks dated 15.10.2015, the amount of Rs.1,22,487/- is recovered from his pension. The stand taken by respondent No.3 is that the Department noticed wrong fixation of pay scale of the petitioner payable during the period April, 1997 to June, 2015. It is fairly stated by the respondent Zilla Parishad that the petitioner was not instrumental in preparation of his pay structure and had not played any fraud on the Department so as to gain extra payment and therefore, caused unjust enrichment.

4. In the above facts of the case, it is apparent that the law laid down in the matters of *Shyam Babu Verma vs. Union of India*, (1994) 2 SCC 521, *Syed Abdul Qadir vs. State of Bihar*, 2009 (3) SCC 475 and *the State of Punjab and others vs. Rafiq Masih (White Washer) and others*, 2015 (4) SCC 334, would be applicable to the case of the petitioner. He is not alleged to have

participated in the wrong fixation of his pay scale. There is no allegation that he has played a fraud. The employer has not taken a written undertaking from the petitioner to repay the amount if it is eventually noticed that he is a beneficiary of excess payment of salary. He superannuated on 30.09.2015 and the recovery has been caused on 15.10.2015.

5. In view of the above, this Writ Petition is allowed in terms of prayer clause “A”, which reads as under :-

“(A) By issuing Writ of certiorari remarks in pension order dated 15.10.2015 respect of recovery of the excess amount paid to the petitioner of Rs.1,22,487/- may kindly be quashed and set aside.”

6. Respondent No.3 shall, therefore, refund the amount of Rs.1,22,487/-, without interest, to the petitioner as expeditiously as possible and in any case, on or before 30.10.2021, failing which, the amount shall carry interest @ 6% p.a. from November, 2013.

7. Rule is made absolute in the above terms.