

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

100 WRIT PETITION NO.2500 OF 2020

Shobha w/o. Prakash Kharat,
[Wife of the deceased employee]
Age: 42 years, Occ. Housewife,
R/o. 4-18-43, Mill Corner,
Bhuiwada, Aurangabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai-400 032.
2. The Joint Director of Higher Education,
Maharashtra State, Aurangabad Region,
Aurangabad.
3. The Accountant General (A and E)
Maharashtra State-II, Nagpur
4. Dr.Babasaheb Ambedkar Marathwada
University, Aurangabad,
Through its Registrar.

.. RESPONDENTS

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Mr.Bipinchandra K. Patil, Advocate for the petitioner
Mr.A.R.Kale, AGP for the respondent-State
Mr.M.V.Navandar, Advocate for respondent no.4.

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**CORAM : S.V.GANGAPURWALA &
S.G.DIGE, JJ.**

DATE : 28.02.2022

ORAL JUDGMENT: Per S.V.Gangapurwala, J. :

1] Rule. Rule made returnable forthwith. With consent of the parties, the matter is taken up for final hearing.

2] The husband of the petitioner was working as Plumber with respondent no.4. He died while in service. After death of the husband of the petitioner, recovery is claimed by respondent no.3 on the ground of wrong pay fixation and excess amount of salary paid to the deceased.

3] Learned counsel for respondent no.4 submits that it was upon the direction of the Government the recovery was claimed.

4] We have heard Mr.Patil, learned counsel for the petitioner.

5] It is not the case of fraud or misrepresentation on the part of husband of the petitioner. The husband of the petitioner has died and from retiral benefits, recovery is sought to be claimed. The same would cause hardship to the petitioner.

6] The 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 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.”

7] All the parameters as laid down by the Hon’ble Apex Court are applicable to the present matter also. The recovery is claimed after the death of the employee from the retiral benefits. The deceased husband of the petitioner was working as Class-IV employee. Hardship would be caused if recovery is now claimed.

8] In the light of above, we pass the following order :

ORDER

i] The impugned order to the extent of recovery is quashed and set aside.

ii] Rule is made absolute. No costs.

iii] Writ Petition is disposed of accordingly.

[S.G.DIGE, J.]

[S.V.GANGAPURWALA, J.]

DDC