

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

927 CIVIL APPLICATION NO.15886 OF 2022
IN
REVIEW APPLICATION STAMP NO.23756 OF 2022
IN
WRIT PETITION NO.1212 OF 2022
WITH
REVIEW APPLICATION STAMP NO.23756 OF 2022

THE STATE OF MAHARASHTRA THROUGH IT'S
SECRETARY AND OTHERS
VERSUS
MAHMAD NAWAB SHAIKH

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AGP for Applicants : Mr. S G Sangle

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CORAM : RAVINDRA V. GHUGE & SANJAY A. DESHMUKH, JJ.
Dated : December 02, 2022

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PER COURT :-

1. For the reasons stated in the civil application, delay is condoned and the civil application is allowed.
2. With the consent of the learned AGP, the review application is taken up for hearing.
3. The learned AGP has strenuously canvassed the 7 grounds formulated in the memo of the review petition, which read as under :-
 - I. The judgment and order dated 14.21.2022 is may kindly be review. The writ petition may kindly be posted to the original stage on the background of above stated facts.

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- II. The judgment and order may kindly be review on the background that, the petitioner not narrated complete facts of the case and more particularly the fact that the petitioner is in service.
 - III. The judgment and order is also required to be review on the background that, the petitioner placed reliance on judgment of Apex Court in the matter of State of Punjab Vs. Rafiq Masih which is absolutely not applicable in the present case. In the matter of Rafiq the petitioner was retired employee from class-3, class-4, however, the case in hand the petitioner is in service candidate. In that view of the matter the ratio is not at all applicable.
 - IV. The judgment is also required to be review for the reason that office of present deponent has extended the monetary service benefits to the petitioner erroneously and to which the petitioner has not denied. In fact, the petitioner has accepted that even if monetary benefits are extended erroneously those cannot be recovered.
 - V. The judgment and order required to be review for the reason that, there is a huge amount which was erroneously over paid to the petitioner if that is not recovered that is a loss of public money.
 - VI. The judgment and order is also required to be review for the reason that any wrongful benefits given to the petitioner cannot be perpetuated.
 - VII. The judgment and order required to be reconsider as the petitioner has also not availed alternate and efficacious remedy raise challenge to the same before proper Coram as he is working as Government servant.”
4. He further submits that, the judgments cited by the original petitioner were in the context of the retired employees. The original petitioner was not a retired employee. When a wrong pay fixation has been made,

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the employer is within its powers to recover the excess payment.

5. Having considered the strenuous submissions of the learned AGP for the review applicant, we have perused the order dated 14.2.2022 passed by this Court in writ petition no.1212 of 2022. The scope of entertaining a review petition is now well settled in **Lily Thomas Vs. Union of India, AIR 2000 SC 1650** and **S. Madhusudhan Reddy Vs. Narayana Reddy and others, 2022 Livelaw (SC) 685**. Paragraph no.26 from **S. Madhusudhan Reddy** (supra) reads thus :-

“26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court’s jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 30 (2020) SCC Online SC 896 Civil Appeals No. @ SLP (C) Nos.9602-03 of 2022 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be

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produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on grounds, at least analogous to those specified in the rule” (Refer: [Chajju Ram v. Neki Ram](#)¹⁷ and [Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulouse Athanasius and Others](#)¹⁸).

6. Taking into account the law laid down by the Hon’ble Supreme Court in **Chandi Prasad Uniyal and ors. Vs. State of Uttarakhand and ors reported in AIR 2012 SC 2951, Syed Abdul Qadir Vs. State of Bihar reported in 2009 (3) SCC 475 and the State of Punjab and others Vs. Refiq Masih (White Washer) and others, reported in 2015 (4) SCC 334**, the recovery from an employee, who belongs to Class-3 or Class-4 category, who is on the verge of retirement, who has not indulged in a fraud, who had not orchestrated his own wrong pay fixation and recovery after a long passage of time, is not to be permitted. If at the time of revision of pay fixation, an undertaking from the

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employee has been taken, vide which he agrees to refund the excess amount and if it is noticed that excess amounts were wrongly paid to him, recovery can be possible in certain circumstances (High Court of Punjab and Haryana and others Vs. Jagdev Singh (2016) 14 SCC 267).

7. In the instant case, the original petitioner is a class-3 employee working as a driver. There is no allegation of fraud against him. It is not contended that he was instrumental in orchestrating wrong pay fixation. There is no allegation that he had misrepresented. He was paid salary as per his pay fixation from the years 2008 to 2020. In these circumstances, we do not find that recovery sought against the petitioner could be sustained.

8. We are, therefore, of the view that review applicant has not been able to point out any error apparent on the face of the order. As such this review petition stands rejected.

9. No costs.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)

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