

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

8 WRIT PETITION NO.14702 OF 2021

1. Ajinath S/o Narayan Labade
Age : 61 Years, Occ. Pensioner,
R/o. Bhatodi, Tq and District
Ahmednagar.
 2. Prabhakar S/o Narayanrao Durgude,
Age : 63 Years, Occ. Pensioner,
R/o. Rushi Prasad, Mahalaxmi Colony,
Tq. Sangmner, Dist. Ahmednagar.
 3. Anil S/o Rabhaji Auti,
Age : 59 Years, Occ. Pensioner,
R/o. Ayodhya Colony, Balikashram
Road, Ahmednagar,
 4. Ashok S/o Vitthal Fasale
Age : 61 Years, Occ. Pensioner,
R/o. Navnath Nagar, Rahata,
Tq. Rahata Dist. Ahmednagar
 5. Babasaheb S/o Ramrao Gadekar,
Age : 59 Years, Occ. Pensioner,
R/o. Navnath Nagar, Rahata,
Tq. Rahata, Dist. Ahmednagar
 6. Prakash S/o Sahadeo Waghmare,
Age : 55 Years, Occ. Pensioner,
R/o. Gahukhel, Post Welturi,
Taluka Ashti, Dist. Beed.
- ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai- 32.
2. The Director General of Police,
Maharashtra State Police

Directorate, Mumbai.

3. The Special Inspector General
of Police Nashik Range, Nashik.
4. The Superintendent of Police,
Ahmednagar.
5. Principle Accountant General
(A & E), Maharashtra
Mumbai-20.

..RESPONDENTS

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Advocate for the Petitioners : Mr. K. D. Pote h/f
Mr. A.G. Ambetkar
A.G.P for Respondent-State : Mr. P.K. Lokhotiya
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**CORAM : R. D. DHANUKA &
S.G. MEHARE JJ.
DATE : 07.03.2022.**

ORAL JUDGMENT (PER R.D. DHANUKA J) :-

Rule. Respondents waives service of notice.

2. Rule is made returnable forthwith.

3. By this petition filed under Article 226 of the Constitution of India, petitioner seeks a writ of Mandamus directing the respondents to refund the amount which is deducted from the retirement benefit receivable by the petitioners as per list annexed to Exhibit 'A' to the petition along with 10% interest thereon.

4. The petitioners admittedly worked in Group 'C' category and no undertaking was taken from them to the effect that, in the event of excess payment made to them, they would refund the excess amount if any. The respondents however effected recovery from the retirement dues of the petitioners.

5. Learned counsel for the petitioners invited our attention to the Judgment dated 4th October 2022 delivered by the Division Bench of this Court in case of *Hari S/o Mohan Pathe and Others Versus The State of Maharashtra and another in Writ Petition No. 11036 of 2021* and submits that after adverting to the Judgment of the Hon'ble Supreme Court in case of *State of Punjab and others etc Vs. State of Punjab and others 2014 DGLS(SC) 1064*, this Court had in identical fact has quashed and set aside the action of recovery of excess payment from the retirement benefits of the petitioner therein.

6. We have perused the said Judgment and also other Judgments annexed to the Writ Petition.

6. The learned A.G.P is not able to distinguish the said Judgments. In our view the said Judgment apply to the facts of the case. We are respectfully bound by the said Judgment. Accordingly we pass the following order

ORDER

- (i) Writ Petition is made absolute in terms of prayer clause 'B'.
- (ii) Respondents to refund the amount which is deducted and shall release in favour of petitioners within two weeks from today. Interest that would be calculated by the respondents should be up to the date of payment.
- (iii) Rule is made absolute.
- (iv) No order as to costs.

Parties to act upon the authenticated copy of this order.

(S.G. MEHARE J.)

(R.D. DHANUKA J.)

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