

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9525 OF 2021

Prashant Ramesh Bhat & Ors.

....Petitioners

V/S

The State of Maharashtra & Ors.

....Respondents

...

Mr. V.S. Tadke i/b Mr. Balaji S. Shinde for the Petitioners.

Mrs. P.H. Diwan, AGP for Respondent Nos.1 to 4-State.

...

**CORAM : S.V. GANGAPURWALA &
SANDEEP V. MARNE, JJ.**

DATE : 19 JULY 2022.

P.C.:

1 The Petition is challenging the recovery.

2 It is submitted that the Petitioners were given the benefit of one step increment in the year 2002 and in the year 2017 recovery is sought to be made. The learned Counsel submitted that the Petitioners would suffer hardship if the recovery is claimed. The Petitioners are Class-III employees.

3 We have heard the learned AGP for the Respondent.

4 This Court on 7 March 2022 issued notice of final disposal to the Respondents. As per the Bailiff Report notice is duly served to Respondent Nos.5 and 6.

5 The issue is no longer res-integra.

6 The Apex Court in case of **State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.** reported in (2015) 4 SCC 334 has laid down parameters. The same can be reproduced as under:

“18. 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 hereinabove, 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 the retired employees, or the 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.”

7 All the parameters as observed by the Apex Court are fulfilled in the present case also. In view of that the impugned order to the extent of recovery is quashed and set aside.

8 The Writ Petition accordingly disposed of. No costs.

(SANDEEP V. MARNE, J.)

(S.V. GANGAPURWALA, J.)

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