

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

955 WRIT PETITION NO. 7655 OF 2019
WITH
CIVIL APPLICATION NO.2923 OF 2023

SALIM AKBAR KHATIK
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS

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Advocate for Applicant : Mr. Deshmukh Arvind And Pingle Vivek G
AGP for Respondent No.1: Mr. S.G. Karlekar
Advocate for Respondent Nos. 2 to 5 : Mr. S.S. Randive

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 3rd MARCH, 2023.**

PER COURT :-

1. Considering the conspectus of the matter, the learned advocates representing the litigating sides, submit that the Civil Application may be disposed off and the Writ Petition may be heard, today.

2. Heard the learned advocates.

3. The Petitioner is a class III employee who has superannuated on 31.3.2018. His pay fixation was made by order dated 24.9.2009, to be made effective from 1.7.2006. After his superannuation, an order is passed by the Respondents dated 16.8.2019, contending that the Petitioner is a beneficiary of a wrong

pay fixation and an amount of Rs.2,98,421/- is to be recovered from him. For this purpose, the gratuity, group insurance scheme amount, leave encashment amount, T.A. and D.A. arrears, have been withheld by the employer.

4. The learned advocate representing the employer, Respondent Nos. 2 to 5 has vehemently supported the impugned order. He submits that the department has the authority of recovering the excess amount wrongly paid to the Petitioner in the light of Rule 132 and 134(a) of the Maharashtra Civil Services (Pension) Rules, 1982.

5. It emerges from the record and it is undisputed before us that the Petitioner has not played any role in the purported wrong pay fixation that was paid to him. Neither has the petitioner manipulated any record, nor have allegations of fraud been levelled against him. No undertaking was tendered when benefits were extended to him in 2009. He is a class III employee, who has superannuated before the recovery was initiated.

6. In view of the above, the law laid down by the Hon'ble Supreme Court in ***Syed Abdul Qadir vs. State of Bihar and others, 2009 (3) SCC 475*** and ***State of Punjab and other vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334 = AIR 2015 SC 696***, are squarely applicable to his case.

7. Hence, this Petition is allowed in terms of prayer clause "B". All arrears of service benefits/pension/retiral benefits shall be calculated by the Respondent employer and the said amount, alongwith interest at the rate of 6% p.a., shall be paid to the Petitioner, within 45 days from today.

8. In the light of above, the pending civil application is disposed off.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/