

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

98 WRIT PETITION NO.483 OF 2023

ANIL KISHANRAO JOSHI
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

...
Advocate for Petitioner : Mr. Jain Vishwajit R. (Kamboj)
AGP for Respondents/State : Mr. P.S. Patil
Advocate for R/2 & 3: Mr. S.B. Pulkundwar
...

**CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**
DATE : 17th January, 2023

PC. :-

1. The petitioner, a retired employee, has put forth prayer clause (C), which reads as under :-

“C] By issuing writ of mandamus or any other appropriate writ and may kindly direct to the direct to the respondent no. 2 and 3 to refund an amount of Rs. 1,53,682/- with interest to the petitioner which was deducted from the amount of retirement gratuity.”

2. Heard the learned Advocates for the respective sides.

3. The learned Advocate representing respondent Nos.2 and 3 - Zilla Parishad, submits on a query from the Court that, neither the petitioner had given any undertaking, nor the petitioner was heard prior to deducting the amount of Rs.1,53,682/- from his retiral benefits.

4. The pay fixation was done by the employer at the time of 4th, 5th and 6th Pay recommendation. The last pay fixation was of 2005. The petitioner retired on 31.01.2016. No notice was issued. No hearing was conducted. By order dated 08.01.2016, purported excess amounts paid, were recovered from the gratuity of the petitioner.

5. It appears that the amount deducted from the retiral benefits of the petitioner is on account of over payment of pay and allowances including leave salary. Admittedly, prior to his retirement, there was no show cause notice issued to him, much less any hearing given. No undertaking was taken from the petitioner so as to agree that excess payment would be returned to the employer.

6. In view of the above, the petitioner's case is squarely covered by the judgments of the Hon'ble Apex Court in cases of **State of Punjab and others Vs. Rafiq Masih (White Washer), (2014) 8 SCC 883, and Syed Abdul Qadir and others Vs. State of Bihar and others, (2009) 3 SCC 475.**

7. The learned Advocate for the Zilla Parishad submits that the petitioner has belatedly approached this Court. A cause of action of 2016 is sought to be espoused by filing this petition on 14/12/2022. Hence, interest may not be granted to the petitioner.

8. The learned Advocate for the petitioner submits that, at least 3 years interest may be granted by considering this to be a reasonable period.

9. Having considered the above, we are of the view, that the interest @ 3% p.a., as granted to similarly situated employees, could be restricted to a period of 3 years.

10. This petition is, therefore, allowed. The deducted amount of Rs.1,53,682/- shall be returned to the petitioner alongwith simple interest @ 3% p.a. for a period of 3 years, preceding the date of this order. The said amount shall be paid on or before 24/03/2023.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]