

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7259 OF 2022

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Dattaram Kashinath Palwankar

..... Petitioner

Vs.

Municipal Corporation of
Greater Mumbai & Ors.

..... Respondents

Mr. Mahendra Agavekar with Shraddha Chavan for the Petitioner
Mr. B. V. Samant, AGP for the State
Mr. S. N. Pillai with Mr. R. Y. Sirsikar for Respondent No.1

CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.

DATED : MARCH 27, 2023

P.C.

1. The Petitioner is challenging the recovery made by the Respondents.

2. The learned Counsel for the Petitioner submits that the amount on account of implementation of the 6th Pay Commission was paid to the Petitioner from 2012 to 2014 and the recovery is claimed under letter dated 22nd September 2019. The said recovery is for a period of more than five years. As such the same is covered as per the judgment of the apex court in the case of *State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors. (2015) 4 SCC 334*.

3. The learned Counsel for the Petitioner submits that it would be iniquitous to recover the said amount. Hardship would be caused to the Petitioner.

4. The learned Counsel for the Respondents submits that the Petitioner stood retired on 28th February 2009. In the year 2010 a decision was taken to give the benefit of 6th Pay Commission and thereafter excess payment was made on account of erroneous implementation of the same. All this happened after the retirement of the Petitioner. As such the letter was given in September 2019. The Petitioner did not abide by that, as such, recovery is claimed.

5. We have considered the submissions. It appears that five installments are recovered from the Petitioner.

6. In normal course, we would have set aside the recovery of payments made to an employee during his service and sought to be done after his retirement.

7. In the present case, the Petitioner stood retired on 28th February 2009 and was paid all the retiral benefits. The pension had commenced. It appears that in the year 2010 a decision was taken by the Respondents to revise the pay scale in view of

implementation of the 6th Pay Commission and though the Petitioner had retired, the arrears were paid to the Petitioner after retirement during 2012 to 2014.

8. It is worth considering that the Petitioner has retired as a Class-II officer and was working as a Senior Accounts Manager. It is not disputed that the said post is a Class-II post. The parameters laid down in the case of Rafiq Masih (supra) may not enure to the benefit of the Petitioner. The Petitioner is a Class-II employee so also the benefits were given to the Petitioner after his retirement and recovery thereof is claimed.

9. In light of the above, we are not inclined to grant relief to the Petitioner.

10. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)