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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 124 OF 2023

**The Executive Engineer, Dhom
Irrigation Division, Satara**

.. Petitioner

Vs.

**Shri Valsan Valiya Punathil
& Anr.**

.. Respondents

Miss. Aparna D. Vhatkar i/by Mr. Nitin P. Deshpande for petitioner.

Mr. Bhushan A. Bandiwadekar for respondent no.1.

Mr. B. V. Samant, AGP for respondent no.2/State.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: JANUARY 10, 2023

P.C.:

1. The present petition is against the order dated 25th June, 2021 in Original Application No. 280 of 2017. Under the said order, the Tribunal directed the present petitioner to refund the amount recovered from the respondent no.1. The Tribunal set aside the order of recovery dated 25th November, 2016.

2. The learned advocate for the petitioner submits that because of the wrong fixation, an excess amount of salary was paid to the respondent no.1 since the year 1992. The respondent no.1 stood retired on or about 31st May, 2017. According to the learned advocate, the respondent no.1 cannot be unjustly benefited because of the wrong fixation. The petitioner is within its right to recover the amount. No illegality is committed by the petitioner while directing recovery.

3. We have heard the learned advocate for the respondent no.1.
4. It is not disputed that the recovery is sought to be claimed by the petitioner under order dated 25th November, 2016 when the respondent no.1 was on the verge of retirement. It is also not disputed that the respondent no.1 was working on the Class III post. The recovery order is in respect of the payment made since the year 1992. The recovery was claimed on the ground that the respondent no.1 was given erroneous increment.
5. It is not the case of the petitioner that the erroneous pay fixation was on account of the misrepresentation on the part of the respondent no.1. The recovery claimed is more than five years prior to the retirement.
6. The respondent no.1 was working as Class III employee at the time of his retirement. The recovery is claimed on the verge of the retirement of respondent no.1. Hardship would be caused to the respondent no.1 if such recovery is upheld.
7. All the parameters laid down by the Apex Court in the case of ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.***, reported in (2015) 4 SCC 334 are attracted.
8. The Tribunal has not committed any error in passing the impugned order.
9. In light of that, writ petition is dismissed. No costs.

(SANDEEP V. MARNE, J.) (ACTING CHIEF JUSTICE)