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

WRIT PETITION NO. 8706 OF 2021

Ansar Ismail Beg ... Petitioner
vs.
The State of Maharashtra and Anr. ... Respondents

**WITH
WRIT PETITION NO. 8705 OF 2021**

Vajiuddin Hisamoddin Inamdar ... Petitioner
vs.
The State of Maharashtra and Anr. ... Respondents

Mr. Anuj Tiwari a/w. Ms. Saba A. for the Petitioner in both
Petitions. .

Mr. B. V. Samant, AGP for the State.

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

DATED : 3 FEBRUARY, 2023

P.C. :-

1. Heard learned counsel for the petitioners and the learned
AGP. The petitioners are challenging the pension payment
order withholding amount from the gratuity on the ground
that the petitioners during service were paid excess salary due
to wrong fixation.

2. Learned AGP submits that the petitioner's remedy is before the Maharashtra Administrative Tribunal. The petitioners have moved this court after six years. According to the learned AGP as on wrong premise pay fixation was done and excess salary was paid. Respondent is entitled to recover the same from the retiral benefits.

3. The learned counsel for the petitioners submits that this court in case of similarly situated persons, has set aside the order of recovery and directed to refund the amount of which recovery was made on account of wrong fixation.

4. The learned counsel refers to the judgment and order dated 18.07.2017 passed in Writ Petition No.5367 of 2016 and the judgment and order dated 12.02.2016 passed in Writ Petition No.695 of 2016.

5. It is not disputed that the petitioners are similarly situated as the petitioners in Writ Petition Nos.5367 of 2016 and 695 of 2016, referred to above and are from the same Department.

6. The petitioners have retired from service and claim the refund of the amount recovered from them on account of

excess payment made to them towards over payment and allowances. The petitioners rely on the judgment in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer), etc.*** reported in 2015(4) SCC 334. The Apex Court in the said judgment laid down the following parameters :-

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).
- (ii) Recovery from retired employees, or 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 employees, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employers right to recovery.

7. The petitioners were working on Class-III posts on the date of retirement. It would cause hardship to the petitioners if the said amount is recovered. All the parameters detailed in the judgment of the Apex Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer), etc. (supra)*** are attracted in the present matter.

8. In light of the above, the impugned order of recovery is quashed and set aside. In case the respondents have recovered the amount from the petitioners, the same shall be refunded to the petitioners expeditiously and preferably within four (04) months.

9. The Writ Petitions are accordingly disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)