

Jvs

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14575 OF 2018

Dr. Dnyanaba Baliram Range .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION NO. 268 OF 2019

Dr. Ganesh Pundalikrao Nichat .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION ST. NO. 12937 OF 2018

Dr. Chandrakant B. Dixit .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION NO. 14576 OF 2018

Dr. Naresh Ranraoji Raut .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

Mr. N. V. Bandiwadekar, Senior
Advocate i/b. Ms. Ashwini bandiwadekar
for the petitioners.

Ms. R. A. Salunkhe, AGP for respondent
no. 1 (State).

Mr. Shankar P. Thorat for respondents 2
and 3.

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

DATE: MARCH 27, 2023

ORAL ORDER: (Per - the Acting Chief Justice)

1. Rule. Rule is made returnable forthwith. By consent of the parties, taken up for final disposal.
2. All these petitioners retired as Extension Officers (Health). It is not disputed that the same is Class-III post. It appears that re-pay fixation was done at the time of their retirements. It transpired that in the years 2006 to 2008, on account of erroneous pay fixation, excess amount was paid to the petitioners. After re-pay fixation was done, recovery is also claimed from the retiral benefits of the petitioners.
3. The learned senior advocate for the petitioners submits that all these persons retired as Class-III employees. It was not on account of misrepresentation or fraud by the petitioners that the respondents had done erroneous pay fixation in the years 2006 to 2008. The petitioners, from time to time, received salary as per the pay fixation done. It is only at the time of retirement the re-pay fixation was done and recovery is claimed from the petitioners. According to the learned senior advocate, the same is not permissible. Reliance is placed on the decision of the Apex Court in the case of *State of Punjab and others vs. Rafiq Masih (White Washer) & Ors.* reported in 2015 (4) SCC 334.
4. The learned advocate for the respondents submits that the petitioners can file appeal against re-pay fixation done and/or recovery claimed under Rule 14 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964. According to the learned advocate, these petitioners have given undertakings that if due to erroneous pay fixation excess amount is paid, they would repay the same or that the respondents would be entitled to recover the same. Once the undertakings have been given, the petitioners now cannot agitate that recovery cannot be made. Reliance is placed upon the judgment of the Apex Court in

the case of *High Court of Punjab & Haryana & Ors. vs. Jagdev Singh*, reported in AIR 2016 SC 3523.

5. We have considered the submissions canvassed by the parties.

6. Petitioner Mr. Dixit seems to have given undertaking on 14th March 2014. Petitioner Mr. Range seems to have given undertaking on 15th October 2014. The undertaking of petitioner Mr. Nichat, it appears, is of the year 2015. No such undertaking is said to have been given by petitioner Mr. Raut. Mr. Range retired on 31st December 2012, Mr. Raut retired on 30th November 2013, Mr. Dixit retired on 30th June 2016 and Mr. Nichat retired on 31st January 2016. The pay fixation, it appears, is done in the year 2008 and at that time, it appears that the respondents committed an error of granting higher Grade-Pay. All these undertakings are much subsequent to the benefit given. The undertaking of Mr. Range is after his retirement. The undertaking of Mr. Dixit is just prior to his retirement. Mr. Nichat's undertaking also appears to be in the year 2015 and he retired in January 2016. At the time of grant of higher grade pay, no such undertakings were given. The first time-bound benefit was given on 10th April 2008 with effect from 10th January 1990 and at that time, some erroneous pay fixation was done.

7. The Apex Court in the case of *Rafiq Masih* (supra) has laid down the following parameters: -

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (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.

8. The aforesaid criteria laid down by the Apex Court is attracted in the present case. Recovery is claimed from the retiral benefits of the petitioners. Wrong pay fixation is not at the behest of the petitioners nor on account of their misrepresentation. It would be iniquitous to recover the amount from the retiral benefits. Hardship would be caused to the petitioners.

9. In the case of *Jagdev Singh* (supra), the recovery claimed was from a Class-I officer. The respondent therein was a judicial officer. He was initially placed under suspension and then compulsorily retired. In the said case, the revised pay-scale was granted to him after he furnished an undertaking. In the present case, at the time of granting the benefit of the revised pay-scale, no undertaking was taken from the petitioners. The undertakings were taken later on; in some cases, after retirement. The judgment in *Jagdev Singh* (supra) would therefore not apply to the facts in the present case. The facts of the present case are similar to the facts in the case of *Rafiq Masih* (supra).

10. In light of the above discussion, we pass the following order:

- (i) The impugned order to the extent of recovery is quashed and set aside.

- (ii) The order with regard to re-pay fixation done is not interfered with.
- (iii) The amount, if recovered from the petitioners, shall be refunded to them within 4 (four) months.

11. Rule is made absolute in the aforesaid terms. The writ petitions are disposed of.

12. No costs.

SALUNKE
J V

Digitally signed
by SALUNKE J V
Date: 2023.03.29
14:00:01 +0530

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)