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

WRIT PETITION NO. 8414 OF 2019

Satish Bhagwan Ranmale

..... Petitioner

Vs.

The Executive Engineer, EHV (O and M)
Division, Mah. State Electricity
Transmission Co. Ltd. & Anr.

..... Respondents

Mr. Bhushan A. Bandiwadekar for the Petitioner
Ms. Niyati Merchant I/b. MDP & Partners for Respondent Nos.1 & 2

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

DATED : JANUARY 27, 2023

P.C.

1. The Petitioner assails the impugned orders/ communications thereby directing the recovery from the Petitioner towards excess amount paid.

2. The learned Counsel for the Petitioner submits that on or about 7th November 2008, the Respondents were aware about the allowances paid to the Petitioner. Though, in the year 2008 they were aware about the allowances paid to the Petitioner, the impugned order is passed in the year 2019 seeking recovery of the amount paid from the year 2008 onwards. The recovery could not have been claimed after the payment is made prior to five years. The

learned Counsel submits that the excess payment allegedly made by the Respondents is not on account of fraud or misrepresentation on the part of the Petitioner. The Petitioner has not given any undertaking that if excess payment is made or wrong pay fixation is done, the Petitioner would refund the same. The undertaking obtained by the Respondents in the year 2022 would be of no avail, as the same is after the recovery order is issued. The learned Counsel, to substantiate his contentions relies on the judgment of the Apex Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. 2015 (4) SCC 334**).

3. The learned Counsel for the Respondent supports the impugned order and submits that the Petitioner cannot take benefit of allowances erroneously paid. The Petitioner is working as a Class-I Officer.

4. We have considered the submissions canvassed by the parties. It appears that the Petitioner was paid excess amount from the year 2008 on account of incentive for serving at Padghe. The Petitioner was transferred on promotion from Padghe to Aurangabad. Naturally, after being transferred to Aurangabad, the allowance which is paid to the Petitioner while working at Padaghe (tribal area) could not have been continued.

5. The Petitioner is working as a Class-I Officer. In fact the Petitioner ought to have pointed out this fact to the officer concerned that he is not entitled for *bhatta* / allowances to be paid on account of serving at tribal and/or difficult area, as he was transferred to Aurangabad which is a non tribal area and also not a hard station.

6. The Petitioner is in service. Recovery claimed is in installments. It is submitted that Rs.3,24,124/- is already recovered and the remaining amount due is about Rs.2 lacs and odd. The Apex Court, in the case of Rafiq Masih (*supra*), has laid down the following parameters:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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 employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of

the employer's right to recover."

7. Admittedly, the Petitioner is not a class-III or class-IV employee. He is working as a Class-I Officer. The Petitioner is still in service and recovery claimed is through installments. As the Petitioner is working as a Class-I officer and still in service, it would not be iniquitous to claim recovery from the Petitioner. The Petitioner cannot be permitted to retain the benefits which knowingly he was not entitled to on the basis of principle of *unjust enrichment*.

8. Only because the recovery made is in respect of the excess allowances paid from the year 2008 that may in itself not entitle the Petitioner the benefit of judgment of the Apex Court in the case of Rafiq Masih (*supra*).

9. The Petitioner was issued with salary slips every month. Upon being transferred on promotion, the Petitioner was not entitled for the allowances of serving in tribal/difficult area. The Petitioner knowingly did not bring this to the notice of the employer. In fact, it was the duty of the Petitioner who is a Class-I Officer to bring it to the notice of the employer about he not being entitled to special allowance payable for Padghe station upon his promotion and transfer to Aurangabad. It is not the case of wrong pay fixation, but

knowingly enjoying the benefits of allowances which he was not entitled to. Such a conduct is not expected from Class-I Officer.

10. It is submitted by the learned Counsel for the Petitioner that the Petitioner has paid tax on the amount which is sought to be recovered. The Petitioner has been benefited with the amount unjustly for a long time and the Government is not seeking recovery of amount along with interest. It is only seeking recovery of the principal amount paid in excess to him. The Petitioner is benefited with the interest amount for the period during which he enjoyed the said amount.

11 In light of the above, we are not inclined to accept the contention of the learned Counsel for the Petitioner. No further orders are necessary. The Writ Petition is dismissed. No costs.

12 Rule is discharged.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)