

jvs

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

WRIT PETITION NO. 10309 OF 2022

Shri Ulhas Ganpat Aher	}	Petitioner
Versus		
Hon'ble Principal District Judge, Nashik and Ors.	} }	Respondents

Mr. Sanjay Kulkarni for petitioner.

Mr. Girish R. Agrwal a/w Ms. Naina P.
Boraste for respondent nos.1 and 2.

Mrs. R. A. Salunkhe, AGP for State.

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

DATE: JANUARY 9, 2023

P.C.:

- 1.** Rule. Rule is made returnable forthwith. With the consent of the parties, taken up for final disposal.
- 2.** The grievance of the petitioner is that after the petitioner retired from service, re-pay fixation has been done and upon such re-pay fixation, Rs. 8,15,607/- (Rupees Eight Lakh Fifteen Thousand Six Hundred Six only) that was paid to the petitioner as per the earlier pay-fixation, is recovered.
- 3.** We have heard the learned advocate for respondents 1 and 2 and the learned AGP for the remaining respondents.
- 4.** It is the contention of the petitioner that according to the pay fixation done in the year 2006, he was paid salary accordingly. After he retired from service, re-pay fixation was done on the ground that the pay fixation done earlier was erroneous and the amount came to be recovered from him.

5. Learned advocate for the petitioner submits that the petitioner is not challenging the re-pay fixation done. He is only claiming refund of the amount that has been deducted by the respondents on account of re-pay fixation.

6. It appears that the petitioner attained the age of superannuation on 30th June 2020 and thereafter re-pay fixation has been done.

7. It is not the case of the respondents that earlier the alleged erroneous pay fixation was done on account of misrepresentation or fraud. The petitioner was not responsible for the pay fixation in the year 2006. The petitioner retired as Class III employee.

8. 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. The Apex Court has laid down the following parameters to be considered while granting refund: -

"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 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 for outweigh the equitable balance of the employer's right to recover".*

9. The petitioner was a Class III employee at the time of retirement. The recovery claimed is for a period of more than five years. The re-pay fixation is done and recovery is claimed after retirement of the petitioner.

10. This would be inequitable and hardship would be caused to the petitioner if the amount recovered is allowed to be retained by the respondents. The petitioner is not guilty of misrepresentation or fraud.

11. In the light of the above, we pass the following order: -

- (i) The re-pay fixation done after the retirement of the petitioner is not interfered with;
- (ii) However, the recovery of amount by the respondents on account of erroneous pay fixation and the excess amount paid to the petitioner in view of the said erroneous pay fixation is set aside;
- (iii) The respondents shall refund the said amount to the petitioner as early as possible, preferably within four months from today.

12. The writ petition is disposed of. No costs.

SALUNKE
J V

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