

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

WRIT PETITION NO. 14735 OF 2018

Shri Daulatrao Dattatreya Pawar Petitioner

Vs.

The State of Maharashtra and Ors. Respondents

Mr.Chandrakant T. Chandratre for the Petitioner

Mr.M.M.Pabale, A.G.P. for the Respondent no.1 / State

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

DATED : MARCH 21, 2023

P.C.

1. Rule.

Rule made returnable forthwith. By consent of the parties,
taken up for final disposal.

2. Recovery is claimed by the Petitioner on account of excess
payment made due to wrong pay fixation.

3. The Petitioner filed Original Application before the Tribunal.
The same is rejected.

4. The learned Counsel for the Petitioner submits that the
Petitioner was working as a PSI from 15.09.1993 to 19.11.2008.
Thereafter, as API from 20.11.2008 to 31.12.2012 and as PI from

01.01.2013 to 01.07.2016. The learned counsel submits that the post of PSI is a Group C post and relies upon the G.R. dated 26.02.2004. The learned counsel relies upon the judgment of the Apex Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others***¹. The learned counsel further submits that the Petitioner has retired on attaining the age of superannuation on 31.05.2017. Recovery is claimed from the Petitioner of a period from 1993 onwards.

5. According to the learned counsel, the undertaking given by the Petitioner is in the routine manner in the year 2009 much after the pay fixation was carried out.

6. The learned A.G.P. submits that at least after 2004-05 post of PSI was categorised as Group B post and relies on the G.R. dated 26.05.2016. According to the learned A.G.P. considering the pay scale the post of PSI also is a Grade B post. The Tribunal has rightly dismissed the original Application.

7. We have considered the submissions.

8. Recovery is sought to be claimed from 1993 onwards. The Petitioner has retired from service on 31.05.2017. After retirement, recovery is claimed from the Petitioner. The

1 (2015) 4 SCC 334

undertaking relied by the Petitioner would not enure to the benefit of the Respondents. The wrong pay fixation is made 1993 onwards and the undertaking is given in the routine manner in the year 2009. The said undertaking cannot be said to have been obtained prior to pay fixation.

9. All the parameters laid down by the Apex Court in the case of *State of Punjab and others vs. Rafiq Masih (White Washer) and others* (Supra) are applicable in the present case. Recovery claimed is for a period of more than 20 years. The Petitioner for the major part was working as a Group C employee. It would be iniquitous to claim recovery from the Petitioner. Hardship would be caused to the Petitioner if recovery is claimed from the retiral benefits.

10. In light of the above, impugned judgment and order to the extent of recovery is quashed and set aside.

11. It is made clear that we have not interfered with the pay fixation. The amount withheld on account of recovery claimed due to wrong pay fixation be released to the Petitioner within two months.

12. Rule accordingly made absolute.

13. Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)