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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2653 OF 2004

Union of India & Ors.	}	Petitioners
Versus		
Shivcharan Agarwal	}	Respondent

Ms. Amita Thakur i/b. Mr. Suresh Kumar for
the petitioners.

Mr. R. V. Dighe i/b. Mr. S. P. Saxena for
respondent no. 1.

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

DATE: JANUARY 19, 2023

P.C.:

1. The petitioners are challenging the judgment of the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter “the Tribunal”, for short), thereby allowing the original application filed by the respondent challenging the recovery.

2. The present writ petition claims recovery on the ground of erroneous pay fixation. The learned advocate for the petitioners submits that the respondent cannot be unjustly enriched on the basis of wrong pay fixation. Once the wrong pay fixation is proved, then, the petitioners would have a right to recover the amount. The Tribunal has failed to consider this aspect in its proper perspective. The learned advocate for the petitioners relies upon a judgment of the Apex Court in **O. K. Udayasankaran & Ors. vs. Union of India**, reported in 1996 (2) SC.SLJ 5.

3. The respondent was Class III employee. The recovery claimed is of much earlier period. It would be inequitable to claim recovery from the respondent at the fag-end of his career.

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- 4.** All the parameters laid down by the Apex Court in **State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.**, reported in (2015) 4 SCC 334 are applicable in the present case.
- 5.** The Tribunal has allowed the original application only to the extent of recovery. The pay fixation of the respondent has been maintained.
- 6.** In light of the above facts, no case for interference is made out. The writ petition is dismissed. No costs.
- 7.** Rule is discharged.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)