



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

911 WRIT PETITION NO. 1827 OF 2024

Divisional Controller,
M.S.R.T.C., Ahmednagar
R/o Sarjepura, Kothala,
Ahmednagar.

...Petitioner

VERSUS

Gahininath Paraji Shirsath,
Age 58 years, Occ. Retired,
R/o Shikshak Colony, Mali
Babhulgaon, Tq. Pathardi
Dist. Ahmednagar.

...Respondent

Advocate for the Petitioner : Mr. Deshmukh Bhausahab
Sadashivrao
...

AND

913 WRIT PETITION NO. 1834 OF 2024

Divisional Controller,
M.S.R.T.C., Ahmednagar
R/o Sarjepura, Kothala,
Ahmednagar.

...Petitioner

VERSUS

1. Chandkha Yakubkha Pathak (Died)
Through L.Rs.

1(A) Rehana Chandkha Pathan,
Age 52, Occu. Household,

1(B) Moin Chandkha Pathan,
Age 27, Occu. Nil,

1(C) Mosim Chandkha Pathan,
Age 23, Occu. Nil,

All R/o At Post Tisgaon Tq.Pat hardi
Dist. Ahmednagar.

...Respondents

...
Advocate for the Petitioner : Mr. Deshmukh Bhausaheb
Sadashivrao
...

CORAM : ARUN R. PEDNEKER, J.

Dated : February 14, 2024

PER COURT :-

1. Heard the learned Advocate appearing on behalf of the petitioner.
2. The petitioner is challenging the order dated 24/03/2011, passed by the Industrial Court in Complaint (ULP) No.01/2005, whereby the retired employee of the petitioner challenged the recovery made by the petitioner from retirement benefits, and deducted Rs.53,202/- on the ground of wrong disbursement, without giving opportunity of hearing to the petitioner. The recovery was done on account of wrongful fixation of salary for the first two years of the employment.
3. The complaint filed by the petitioner is heard by the Industrial Court. The Industrial Court has relied upon the paragraph No.18 of the Judgment of the Hon'ble Supreme Court in case of *State of Punjab and others vs. Rafiq Masih (White Washer) and others*, reported in 2015 (145) FLR 234, wherein the Hon'ble Supreme Court has observed that, it would be impermissible in law to recover excess amounts paid to the employees on account of wrong fixation of pay scale where the recovery is from the employees belonging to Class III and IV service,

when there is no fraud played by the employee. The wrongful fixation of the salary is completely at the instance of the petitioner and that the employee is not responsible for the same.

4. In the instant case, the employee was employed as a Driver on the MSRTC and would be considered to be employed in Class III and Class IV or Group "C" or Group "D". In view of the same, the Industrial Court quashed and set aside the order of re-fixation of wages dated 05/09/2011 and directed the M.S.R.T.C. to refund the amount of Rs.53,202/- to employee Gahininath Paraji Shirsath with interest @ 6% per annum from the date of filing of the complaint till its realization.

5. The law is clear on the subject of recovery on account of wrongful fixation of the salary of the employee of Class "C" or "D" services, where the employee has not played any fraud, the recovery cannot be made from the retirement benefits. I see no error in the order passed by the Industrial Court. The writ petitions are dismissed.

(ARUN R. PEDNEKER, J.)

vj gawade/-.