



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

947 WRIT PETITION NO. 3408 OF 2024

DATTOPANT WAMANRAO PATIL

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS**

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Shri Avinash A. Khande i/by Shri Ganesh V. Sukale, Advocates
for the Petitioner.

Shri S.J. Salgare, AGP for Respondent No.1/State.

Shri V.V. Gujar, Advocate a/w Shri K.A. Sharma, Advocate for
Respondent Nos.2 to 4.

...

CORAM : RAVINDRA V. GHUGE

&

Y. G. KHOBRAGADE, JJ.

DATE :- 13th June, 2024

Per Court :-

1. We have considered the strenuous submissions of the learned Advocates for the respective sides, especially the Zilla Parishad. It is contended on behalf of the Zilla Parishad that this petition should be dismissed with costs of Rs.50,000/-. The recovery is justified as the excess payment was made to the Petitioner from 01.04.2001 onwards till the superannuation of the Petitioner in 2018.

2. Having considered the submissions of the learned Advocates, it is apparent that the recovery has been initiated vide the order dated 13.12.2023, when the pay re-fixation of the Petitioner was done without an opportunity of hearing. The Petitioner, by the time the impugned order was passed, had almost completed five years of retirement. If the pay fixation was been wrongly done and the Department had noticed it's mistake post retirement, the Department could have issued a notice to the Petitioner in order to grant him an opportunity of hearing and then taken a decision as regards correction in the pay fixation. Nevertheless, there cannot be recovery of the amount in view of the law laid down by the Honourable Supreme Court in *Syed Abdul Qadir vs. State of Bihar and others, 2009 (3) SCC 475* and *State of Punjab and other vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334 = AIR 2015 SC 696*. The additional factor is that no undertaking was taken from the Petitioner.

3. In view of the above, this **Writ Petition is partly allowed**. The impugned order dated 13.12.2023 is quashed and set aside with a further direction that there shall be no recovery

from the Petitioner with regard to the purported excess payment made w.e.f. 2001 onwards. If any amount has been recovered from the Petitioner, the same shall be refunded to him, on or before 31.07.2024. If any amount has been deducted from the Petitioner's gratuity, the same shall be returned to him within the same timeline, along with interest at the rate of 10% per annum, which is prescribed under the Payment of Gratuity Act, 1972.

4. We make it clear that if the Respondent-Employer desires to correct the pay fixation of the Petitioner and re-calculate the pensionary benefits, it would be at liberty to issue a notice of hearing to the Petitioner by giving him at least 15 days period to respond to the said notice or such further reasonable period if a reasonable extension of time is sought. Thereafter, an appropriate order on correction in the pay fixation may be passed. Legal remedy as against such order, is permitted.

kps

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)