



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

WRIT PETITION NO. 15725 OF 2023

**BHIMRAO MOGALAJI KUDRE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr. A. V. Indrale Patil, Advocate for Petitioner

Mr. S. K. Tambe, AGP for Respondent No.1

Mr. S. B. Pulkundwar, Advocate for Respondent Nos. 2 to 4

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 03.01.2024

PER COURT :-

1. The learned AGP accepts notice on behalf of Respondent No.1. Mr. S. B. Pulkundwar, the learned Advocate accepts notice on behalf of Respondent Nos. 2 to 4.

2. Recovery has been made from the pensionary benefits of the Petitioner amounting to Rs.1,59,342/-, purportedly on account of wrong pay fixation. It is submitted that the Petitioner, at the time of retirement, was working as a Center Head, on a Class-III post. Hardships would be caused if the recovery is made.

It is submitted that fixation is not made on the basis of the misrepresentation on the part of the Petitioner.

3. Mr. S. B. Pulkundwar, the learned Counsel for Respondent Nos. 2 to 4 alleges delay and laches on the part of the Petitioner in challenging the recovery. If excess amount is paid, the same can be recovered as per Section 134-A of the Maharashtra Civil Services (Pension) Rules, 1982.

4. The Hon'ble Apex Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer), etc., 2015 (4) SCC 334***, has laid down the following principles for prohibiting recovery :-

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from 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 employees, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employees right to recovery.

5. The case of the Petitioner is squarely covered by the aforesaid principles.

6. In the light of the above, the respondents are directed to refund the amount of Rs. 1,59,342/-, recovered from the pensionary benefits of the Petitioner on account of wrong pay fixation, within a period of four months.

7. The **Writ Petition is accordingly disposed off.**

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

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