

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5630 OF 2022

Rambhau s/o Patwaru Gurnule,
Aged 59 years,
Occupation – Retired Employee,
R/o Ward No.2, Lonwahi, Post -
Sindewahi, District Chandrapur -441222. **PETITIONER**

VERSUS

The Executive Engineer,
Maharashtra State Electricity Distribution
Company Ltd., Department of Sanchalan
& Suvyavastha, Admv. Building, 33 KV
Sub-Station Premises, Nagbhid Road,
Bramhapuri – 441 206. **RESPONDENT**

Mr. Sanjay A. Nerkar, Counsel for the petitioner,
Mr. P.V. Bawankule, S.V. Purohit & V.V. Sharma, Counsel for the
respondent.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**
DATED : 16th FEBRUARY, 2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

Heard. **Rule.** Rule made returnable forthwith.

2. The petitioner, being aggrieved by the communication/
letter dated 21-05-2021 issued by the respondent about the recovery of
an amount of Rs.1,28,082/- from the amount of arrears of wages, has
preferred this petition.

3. On 15-3-1984 the petitioner joined with the Maharashtra State Electricity Board (for short the “MSEB”) as a ‘Daily Wager employee’. He was continued in service and rendered a total of 35 years and more than 6 months of service. End of his career, he was working as a ‘Senior Technician’ and was superannuated on 30-11-2019.

4. The respondent had informed the petitioner that, he was entitled to a gratuity of Rs.10,24,652/- only but he was paid the gratuity of Rs.11,52,734/-. Thus, the respondent has paid an excess amount of Rs.1,28,082/- to the petitioner. Therefore, vide impugned communication the respondent has been directed to recover the said amount from the arrears of wages payable to the petitioner. The petitioner by representation dated 04-6-2021 has taken objection to this illegal recovery of Rs.1,28,082/- from his gratuity.

5. Thereafter, the petitioner vide communications dated 28-07-2021, 03-09-2021 and 25-01-2022 requested the respondent for a refund of the amount recovered from his gratuity, but in vain.

6. The learned Counsel for the petitioner vehemently argued that the petitioner was a Class-III employee and in view of the law laid down in judgment in the case of *State of Punjab v. Rafiq Masih*, AIR 2915 SC 696 as well as the judgment passed in Writ Petition

No.7385/2019 (Smt. Veena w/o Shantaram Dable v. Chief Executive Engineer, Zilla Parishad, Wardha, and others), after the retirement of the employees, recoveries by employers from class III employee, would be impermissible in law from the gratuity amount payable to the petitioner.

7. Per contra, the respondent has filed a reply and opposed the prayer made in the writ petition contending that as per the service record the petitioner was entitled to receive Rs.1,00,348/- which was deposited in the account of the petitioner on 30-12-2022, therefore, the petitioner was not entitled to Rs.1,28,082/- as was claimed by him. Hence prayed for the disposal of the petition.

8. It is to be noted that on 08-02-2024 we heard the learned Counsel for both parties. The learned Counsel for the petitioner to buttress his submissions has relied upon the judgments in the cases of *State of Punjab v. Rafiq Masih (Supra)*, *Syed Abdul Qadir and others v. State of Bihar and others*, [2009 AIR SCW 1871]. To counter, the learned Counsel for the respondent submits that an amount of gratuity paid to the petitioner post his superannuation i.e. 30-11-2019, and recovery is also effected post superannuation, in such an eventuality the respondent is only correcting its mistake. However, the learned Counsel for the respondent admitted that the petitioner in law is

entitled to the gratuity amount of Rs.10,24,652/- and therefore, on that day the matter was adjourned as per his request to address on the issue as to how the facts and circumstances of the case law cited supra are not attracted. Despite granting opportunity the learned Counsel for the respondent failed to satisfy us on the said issue.

9. Having considered the aforesaid submissions and facts of the case, it reveals that vide impugned communication/letter dated 21-5-2021 it was informed by the respondent to the petitioner that an amount of Rs.1,28,082/- was liable to be recovered from his arrears/gratuity as there was excess payment made to him. It further appears that the petitioner objected to the recovery of the said amount vide letter dated 04-6-2021, but in vain. Thereafter the petitioner made representations to the respondents on 28-07-2021, 03-09-2021, and 25-01-2022 in that regard.

10. It is a settled position of law as held in ***Rafiq Masih*** (supra) that *“it is not possible to postulate all situations of hardship, that would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, the recovery from the employee or employees to class-III, who are due for retirement or due for retirement within one year, in that case, the recovery of the amount by the employers from the said employee is impermissible.”*

11. From the facts discussed above, it would be very clear that this is a fit case wherein it can be said that if the respondent-employer is permitted to recover the excess amount paid to the petitioner and who is retired from the service, it would be far more wrongful, improper, iniquitous than what it would be if the employer is not permitted to recover. That being so, the judgment of the Hon'ble Apex Court in Rafiq Masih (supra) is squarely applicable to the case at hand. Admittedly, there is no allegation of any fraud or misrepresentation at the behest of the petitioner. Therefore, we deem it appropriate to direct the respondent to refund the amount which was recovered from the arrears/gratuity of the petitioner to him as the petitioner is in no way responsible for the excess payment of the said amount.

12. In view of the aforesaid, we proceed to pass the following order :

- i) The impugned communication/letter No.1162 dated 21-05-2021 issued by the respondent directing recovery of excess payment from the amount of gratuity is hereby quashed and set aside.
- ii) As a sequel, we directed the respondent to refund the amount of Rs.1,28,082/- to the petitioner, within a period of eight weeks from production of the copy of this judgment.

13. Rule is made absolute in the aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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