IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5268 OF 2019

Nilkanth s/o Panditrao Aghor,
Age : 58 years, Occu: Retired as
Registrar (District Court, Osmanabad),
R/o At Post Chikali, Tq. & Dist. Osmanabad.
...PETITIONER

-VERSUS-

1. State of Maharashtra.
Department of Law and Judiciary,
Mantralaya, Mumbai.

2. Accountant General.
Through its Account Officer
Pay Verification Unit Department,
Aurangabad.

3. The Principal District Judge,
Osmanabad
(in Administrative Capacity),
District Court, Osmanabad,
Tq. & Dist. Osmanabad.

4. Accounts Department,
District Court, Osmanabad.
Tq. & Dist. Osmanabad.

5. The Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai.

6. Accountant General, Nagpur,
Accounts Department, Nagpur.
...RESPONDENTS

…

Shri Gaurav L. Deshpande, Advocate for the Petitioner.
Shri R.K. Ingole, AGP for Respondent Nos.1, 2, 5 and 6/State.
Shri C.K. Shinde, Advocate for Respondent Nos.3 and 4.

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CORAM : MANGESH S. PATIL
&
PRAFULLA S. KHUBALKAR, JJ.

Reserved on : 04th March, 2025

Pronounced on : 06th May, 2025

JUDGMENT (*Per Prafulla S. Khubalkar, J.*) :-

1. Heard.

2. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

3. Instant petition under Article 226 of the Constitution of India takes exception to the objection dated 29.10.2018 raised by respondent No.2 about the petitioner's pay fixation and the order dated 28/29.12.2018 of refixation of pay of the petitioner coupled with the order dated 10.01.2019 directing recovery of overpayment from pensionary benefits of the petitioner.

4. Factual matrix leading to the filing of the instant

petition shorn of surplusage, is thus:-

(a) The petitioner joined service on 02.11.1984 as 'English Section Writer' at Civil Court, Junior Division, Paranda, District Osmanabad. On 29.04.1985, he was transferred to the District Court, Osmanabad as 'Junior Clerk'. He was then promoted as 'Senior Clerk' on 14.03.1989. Thereafter, in the year 2003, the petitioner was promoted to the post of 'Assistant Superintendent' and in July, 2008, he was promoted as 'Superintendent'. The petitioner's pay was fixed on the respective posts from time to time even by applying the recommendations of the Shetty Commission. On 15.09.2018, the petitioner was promoted as 'Registrar', District Court, Osmanabad, however, subsequently vide order dated 26.09.2018 he was granted deemed promotion on the post of 'Registrar' w.e.f. 01.06.2018. On 30.09.2018, the petitioner retired on superannuation from the post of Registrar.

(b) Post retirement, during the process of verification of the petitioner's service book, respondent No.2/ Accountant General raised an objection dated 29.10.2018 regarding pay fixation of the petitioner. Pursuant thereto, the Verification Unit refixed the petitioner’s pay by order dated 28/29.12.2018 and inferred that overpayment of Rs.5,41,658/- was made to the petitioner. Resultantly, the amount of overpayment was ordered to be deducted from pensionary benefits of the petitioner, which is challenged by way of the instant petition.

5. To controvert the petitioner’s case, respondent No.2/ Accountant General, Aurangabad, filed affidavit in reply dated 17.07.2019 justifying the objection and the decision of recovery. Respondent No.6/ Accountant General, Nagpur, also filed separate affidavit dated 16.01.2024 and justified the objection. Respondent Nos.3 and 4/ Principal District Judge and the Accounts Department, District Court, Osmanabad, also filed their separate affidavit dated 04.02.2025 justifying the decision of refixation and recovery.

6. Arguing for the petitioner, learned advocate Shri Gaurav Deshpande vehemently submits that the impugned objection and the order of recovery is arbitrary and illegal thereby, depriving the petitioner from the benefits of Shetty Commission’s recommendations. He vehemently submits that the recovery from pensionary benefits of the petitioner is against the

settled position of law laid down in the matter of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334***. He submits that the objection dated 29.10.2018 is itself unsustainable and without any fault on the part of the petitioner, the impugned recovery is ordered.

7. *Per contra*, advocate Shri C.K. Shinde learned counsel for respondent Nos.3 and 4 strenuously opposes the petition and submits that the revised pay fixation is in accordance with Government Resolution dated 20.10.2011 which has implemented the recommendations of the Shetty Commission. He submits that the revised pay scale for the post of 'Assistant Superintendent' was Rs.6500/-, however, the District Judge-1 at Omerga, District Osmanabad, vide order dated 12.01.2012 had incorrectly revised the pay of the petitioner as Rs.7100/- [6500 + (200x3) = 7100] as on 01.04.2003. The learned advocate would then submit that respondent No.2 Accountant General being the competent authority has verified the pay of the petitioner at the time of his retirement and rightly raised an objection dated 29.10.2018 to the pay fixation of the petitioner at Rs.7100/-. In view of the said objection, the District Judge, Omerga, refixed

the pay of the petitioner vide order dated 29.12.2018 and rectified it to be Rs.6500/- instead of Rs.7100/- by considering the provisions of Government Resolutions dated 20.10.2011 and 18.10.2016. He submits that as has been rightly ordered by the impugned order, the amount of overpayment of Rs.5,41,658/- is liable to be recovered from the retirement benefits of the petitioner. By inviting our attention to the undertakings dated 26.05.2009, 05.01.2012 and 18.02.2019 submitted by the petitioner expressing his readiness to refund the amount of excess payment, he would submit that the petitioner is not entitled to derive any benefit of the judgment of the Supreme Court in the matter of ***Rafiq Masih (supra)***. In support of his submissions, he relies on the judgment in the matter of ***High Court of Punjab and Haryana and others vs. Jagdev Singh, (2016) 14 SCC 267***.

8. Learned AGP Shri R.K. Ingole for respondent Nos.1, 2, 5 and 6 adopts the submissions made by the learned advocate Shri Shinde and opposes the petition. In addition, he relies upon Rule 134A of the Maharashtra Civil Services (Pension) Rules, 1982.

9. We have considered the rival contentions of the parties and perused the papers.

10. Primary issue which falls for our consideration is about validity of the objection raised by respondent No.2 regarding wrong pay fixation of the petitioner. It has to be noted that the petitioner was promoted as Assistant Superintendent on 09.07.2003. Revised pay scale for the post of Assistant Superintendent was Rs.6500-10500/- w.e.f. 01.04.2003. Despite this, while revising the petitioner's pay, the same was fixed at Rs.7100/- instead of Rs.6500/- to which the petitioner was entitled to. It is pertinent to note that respondent Nos.3 and 4 have categorically cleared this position vide their reply dated 04.02.2025, which is not controverted by the petitioner by any rejoinder affidavit. Thus, the overpayment of Rs.5,41,658/- made to the petitioner because of wrong pay fixation is not in dispute.

11. As regards the decision to recover the amount of overpayment from pensionary benefits, it is crucial to note that the petitioner belonged to Group B officers and had voluntarily submitted the undertakings from the years 2009 to 2019

categorically mentioning his readiness to refund the amount of excess payment on account of discrepancy due to incorrect pay fixation and also readiness to adjust the excess amount from future payments. Pertinent to note that Rule 134A of the Maharashtra Civil Services (Pension) Rules, 1982, provides for recovery and adjustment of excess amount paid, which is reproduced below:-

> *"134A. Recovery and adjustment of excess amount paid.*
>
> *If in the case of a Government servant, who has retired or has been allowed to retire, -*
>
> *(i) it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement, or*
>
> *(ii) any amount is found to be payable by the pensioner during such period and which has not been paid by or recovered from him, or*
>
> *(iii) it is found that the amount of licence fee and any other dues pertaining to Government accommodation is recoverable from him for the occupation of the Government accommodation after the retirement,*
>
> *then the excess amount so paid, the amount so found payable or recoverable shall be recovered from the amount of pension sanctioned to him:*
>
> *Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him:*

> *Provided further that, the amount found due may be recovered from the pensioner in instalments so that the amount of pension is not reduced below the minimum fixed by Government."*

12. This rule entitles the respondents to make recovery of excess payments from retirement benefits when it is found that due to any reason whatsoever an excess amount has been paid to an employee during the period of his service.

13. The petitioner's reliance on the judgment in the matter of ***Rafiq Masih (supra)*** is primarily on the ground that recovery is ordered after his retirement. However, the petitioner has failed to demonstrate any circumstance about recovery being iniquitous or arbitrary, by raising any ground, defeating the purport of the undertakings submitted by him. It is crucial to note, after giving due consideration to the judgment in the matter of ***Rafiq Masih (supra)***, the Honourable Supreme Court in the subsequent judgment in ***Jagdev Singh (supra)*** has categorically held that an employee is bound by the undertaking submitted by him relating to recovery of overpayment. Relevant observations of the Honourable Supreme Court in paragraph Nos.9 to 11 of

the judgment in ***Jagdev Singh (supra)*** are reproduced below:-

> *"9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.*
>
> *10. In State of Punjab and Ors. etc. v. Rafiq Masih (White Washer), (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:*
> *(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 employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

Thus, the main thrust of arguments of the petitioner alleging recovery after retirement to be illegal, is weakened in view of the pertinent observations of the Honourable Supreme Court elucidating the purport of the undertaking executed by the petitioner.

14. Although the counsel for the petitioner has advanced submissions alleging discrimination with other employees, however, nothing is demonstrated depicting any discrimination. The issue of recovery of overpayment is case specific and it is

considered in the peculiar facts of this case. The judgment of the Honourable Supreme Court in V***. Markandeya vs. State of Andhra Pradesh, (1989) 3 SCC 191,*** reiterating the concept of 'equal pay for equal work' is of no assistance to the petitioner.

15. The undertakings dated 26.05.2009, 05.01.2012 and 18.02.2019 furnished by the petitioner from time to time demonstrate that the petitioner was on notice of the fact that a future refixation or revision may warrant an adjustment of excess payment. It is pertinent to note that the undertakings are voluntarily furnished during the period from 2009 to 2019 and there is no grievance at all about absence of volition. As such, there is no reason to nullify the effect of the undertakings and they would operate with all its vigour.

16. In the peculiar facts of this case, in the wake of undertakings submitted by the petitioner from time to time, in the light of the legal position emanating from the judgment in ***Jagdev Singh (supra)*** and considering the purport of Rule 134A of the Maharashtra Civil Services (Pension) Rules, 1982, the decision of the respondents to recover excess payment from the

petitioner's pensionary benefits, needs no interference on any count. The petitioner's challenge to the impugned decision of recovery after retirement is primarily based on the judgment in ***Rafiq Masih (supra)***, however, we are of the firm view that in view of the undertakings submitted by the petitioner, the judgment in the matter of ***Jagdev Singh (supra)*** would govern the case.

17. In view of the above, the petition does not warrant any interference under Article 226 of the Constitution of India and the same is liable to be dismissed. The Writ Petition is dismissed with no order as to costs.

18. Rule is discharged.

kps **(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.)**