



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8926 OF 2023

VILAS MOHAN PATIL

VERSUS

THE ZILHA PARISHAD JALGAON THROUGH ITS CHIEF
EXECUTIVE OFFICER AND OTHERS

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Advocate for the Petitioner : Mr. Patil Vijay Bhalerao
Advocate for Respondents No.1 to 3 : Mr. Munde Sachin B.

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CORAM : R.G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.

DATE : 02.12.2025

PER COURT:

1. Heard. Rule. Rule is made returnable forthwith. With the consent of the parties the matter is heard finally at the stage of admission.

2. By this writ petition under Article 226 of the Constitution of India, the petitioner has put forth following prayers.

“A] This Writ Petition may kindly be allowed.

B] By appropriate writ, Order or direction in the like nature of writ, the order of respondents and particularly respondent No.3 of deduction of amount of Rs.4,69,854/- from the retiral benefits of petitioner may kindly be quash and set aside as the same is illegal without any authority.

C] By appropriate writ, Order or direction in the like nature of writ, may please kindly be direct the respondents to

pay an amount Rs.4,69,854/- deducted from retiral benefits of petitioner with interest and for that purpose appropriate orders may kindly be passed.

- D] Pending hearing and final disposal of this writ petition, may please kindly be direct the respondents to deposit an amount of Rs.4,69,854/-with interest in this Hon'ble Court.
- E] Any other relief may kindly be granted in favour of the Petitioner.”

3. The learned counsel for the petitioner submits that the petitioner was working as Civil Engineer Assistant which is Class III post. While the pay fixation of petitioner was carried out the respondents under the garb of difference of amount has recovered the amount from the pensionary benefits of the petitioner. Admittedly, the petitioner retired on 29.02.2016, whereas, the deduction is sought after the retirement of the petitioner.

4. The learned counsel appearing for the respondent strenuously contend that since the pay fixation of the petitioner was incorrectly carried out, therefore, the excess amount has been recovered. We, however, find that once the petitioner has retired and if no undertaking was obtained from the petitioner while fixing the pay scale, the amount already paid to the petitioner cannot be recovered that too after his retirement and from the pensionary benefits.

5. In our considered view, the present case falls under the guidelines issued by the Hon'ble Apex Court in the case of **State of Punjab and Ors. Vs. Rafiq Mashi (White Washer) and Ors.; (2015) 4 Supreme Court Cases 334**, relevant paragraph No.18 is read as under:

“18. It is not possible to postulate all situations of hardship, which 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, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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.”

6. Considering the law laid down by the Hon'ble Apex Court in the **State of Punjab and Ors. Vs. Rafiq Mashi (White Washer)** (supra) we allow the writ petition in terms of prayer Clause 'B'.

7. We direct the respondent to refund the amount as sought to be recovered to the petitioner within a period of four (4) months. If the respondents fail to refund the amount of the petitioner within four (4) months the respondents will be liable to pay interest @ 6% per annum on the delayed payment.

8. Rule is thus made absolute in above terms.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)