IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6306 OF 2014

Ramdas s/o Sakharam Jagtap … PETITIONER

VERSUS

The State of Maharashtra & Others … RESPONDENTS

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Mr. A.D. Sugdare, Advocate for Petitioner
Mrs. K.B. Patil Bharaswadkar, A.G.P. for Respondent No.1
Mr. S.T. Shelke, Advocate for Respondent No.2.

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CORAM: ALOK ARADHE, CJ. &
S.G. CHAPALGAONKAR, J.

DATE: 20th MARCH, 2025.

ORAL JUDGMENT (PER : CHIEF JUSTICE) :

1. Rule. Rule is made returnable forthwith. By consent of the learned Counsel for the parties, the Writ Petition is heard finally.

2. In this Petition, the Petitioner, *inter-alia* assailed the validity of the communication dated 18/12/2013, seeking to recover an excess sum of Rs.46,867/-.

3. Facts giving rise to filing of the Petition, in nutshell, are that, the Petitioner was initially appointed as Assistant in the office of the Executive Engineer, P.W.D. under (E.G.S.), Ahmednagar. On 19/7/2004, the services of the Petitioner were absorbed into regular service and the Petitioner was appointed against a Class IV post. Thereafter on 21/4/1999, the pay of the Petitioner was fixed in the light of Government Resolution dated 21/4/1999. Thereafter, the impugned order dated 18/12/2013 was issued seeking to recover a sum of Rs.46,867/- from the Petitioner. The aforesaid notice was issued without affording any opportunity of hearing to the Petitioner. The Petitioner, on 31/5/2018, superannuated. Hence this Petition has been filed seeking the reliefs (supra).

4. Learned Counsel for the Petitioner has placed on record copy of a Division Bench decision of this Court in Writ Petition No.11739/2018, dated 4/2/2025 in support of his contention that no recovery from the Petitioner can be made.

5. The aforesaid position would not be disputed by the learned Counsel for the Respondents.

6. We have considered the rival submissions made by both the sides and have perused the record. The Supreme Court in case of **The State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.** reported in (2015) 4 SCC 334, in paragraph No.13 and 18, *inter-alia*, has held as under :

> "13. First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir's case (supra) recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a

wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.

. . . .

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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employees, would be impermissible in law :

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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 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."

7. Thus, in view of the principles laid down by the aforesaid decision, it is evident that the case of the Petitioner

is covered by the decision of the Supreme Court in case of Rafiq Masih (supra). In the result, the petition is allowed. The notice dated 18/12/2013 is quashed. Rule made absolute.

(S.G. CHAPALGAONKAR, J.) **(CHIEF JUSTICE)**

FMPathan/-