



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

WRIT PETITION NO.6662 OF 2024

Pratap Ramrao Nimbalkar
VS.
The State of Maharashtra and anr.

Mr.S.N.Pagare, Advocate for petitioner
Mrs.V.S.Choudhary, AGP for respondent no.1

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
DATE : AUGUST 07, 2025

ORDER :-

Heard finally by consent of both sides.

2. Impugned in the petition is the order dated 03.04.2024, issued by the respondent – Municipal Corporation, where the petitioner was working on the post of Senior Clerk and superannuated on 31.03.2023. The petitioner was, initially appointed as a Driver and thereafter, promoted and posted as Junior Clerk and subsequently, as Senior Clerk. After a period of one year from the date of retirement, the impugned order came to be issued for recovery of the amount from his pension, on the ground of wrong pay fixation. The amount of recovery comes to around Rs.2,00,000/-.

3. Learned counsel for the petitioner submits that this issue is no more *res-integra* in view of the judgment in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer), (2015)4 SCC 334**, which provides that recovery from the employees belonging to Class III and Class IV service (or Group `C' and Group `D' service) was impermissible.

4. He tenders across the bar a copy of the order dated 10.04.2019, passed by this Court in a group of Writ Petitions, one of which was Writ Petition No.13656 of 2018, wherein the respondent - Corporation had recovered the amount from a Class-III employee and this Court has set aside the same. He submits that the petition be allowed.

5. Learned counsel for respondent - Corporation fairly submits that considering the impugned order, as the petitioner was working as a Group "C" employee and this Court, in identical situation, has set aside the order of recovery of amount, appropriate order may be passed.

6. The relevant observations in the case of **Rafiq Masih** (supra) are reproduced:-

12. 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.

7. The case of the petitioner is covered by the above referred judgment. In view thereof, the order impugned in this petition needs to set aside. Hence, the Writ Petition is allowed in terms of prayer clauses (B) and (C), which read as under:-

b) The order dated 03/04/2024 issued by respondent no.2 may kindly be set aside.

c) By issue of appropriate writ, order or direction the respondent no.2 may kindly be directed not to recover the amount from the pension and pensionary benefits of the petitioner towards salary paid for the period from 05/06/2008 to 05/03/2015.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP