

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4538 OF 2021

Pandit Manaji Pawar

VERSUS

The State Of Maharashtra And Others

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Advocate for the Petitioner : Mr. M.B. Kolpe

AGP for Respondent/State : Mr. S.R. Yadav Lonikar

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**CORAM : S.G. MEHARE &
SHAILESH P. BRAHME, JJ.**

DATED : MARCH 04, 2025

PER COURT :

1. Heard respective counsels.
2. The petitioner, who was Class-III employee was awarded with the second time bound promotion. However, during his services, the amount of Rs.75,000/- was deducted against the excess payment of salary and allowances from March 2018 to July 2018. Rest of the amount of Rs.3,69,731/- was ordered to be recovered from the pensionary benefits. The petitioner had impugned the said recovery before the Maharashtra Administrative Tribunal. The Maharashtra Administrative Tribunal declined the claim of the petitioner that in view of the State of Punjab and Others Vs. Rafiq Masih (White Washer), AIR 2015 SC 496, no such recovery could be done. The claim based upon Rafiq Masih was declined on the basis of the view of the Hon'ble Supreme Court in the case of High Court of Punjab and Haryana and Others Vs. Jagdev Singh, 2016 AIR (SCW) 3523. The

exception to recovery under Rafiq Masih was that where the employee furnished an undertaking to refund the amount, he would not be exempted. In the case at hand, the petitioner has furnished such undertaking. Therefore, the benefit of the view of Rafiq Masih has been denied. So far as this view is concerned, we are not convinced that the Maharashtra Administrative Tribunal is incorrect.

3. The petitioner in his petition in ground No.10 has specifically raised the objection that before the impugned recovery was decided to be recovered, neither the hearing was given nor the show cause notice was served upon him. Therefore, it is against the rule of natural justice.

4. Learned counsel for the petitioner would submit that unless the hearing is granted, passing the recovery order is illegal. Referring to Section 135-A of Maharashtra Civil Services (Pension) Rules, 1982 ('Pension Rules' for short), he vehemently put into service his submissions that the show cause notice before a decision for recovery is mandatory.

5. Learned AGP opposing his contention would submit that Rule 134-A of the Pension Rules mentioned above would apply to the employees, who have rendered the services upon re-employment after the retirement. He would also argue that the petitioner never disputed the calculation. Therefore, no purpose would be served serving a show cause notice upon the petitioner calling him why the

over paid amount should not be recovered from him. Such an attempt would be a futile attempt and formality. So, in this case the notice of such show cause could be exempted.

6. As mentioned above, we are not convinced about the finding of the Tribunal on the point of exempting the petitioner from recovery in view of the Rafiq Masih. However, we find substance in the argument of the learned counsel for the petitioner that Rule 134-A of the Pension Rules has been violated. Without serving a show cause notice upon the petitioner, the recovery was started. The objection of not giving the opportunity of hearing appears to have been not dealt with by the Maharashtra Administrative Tribunal. Be that as it may, prima facie we are satisfied that Rule 134-A of Pension Rules needs to be complied with and to that extent, we interfere with the impugned judgment and order and direct the contesting respondent no.3 to serve a show cause notice upon the petitioner, as to why the amount of excess payment should not be recovered from him. The show cause notice should be issued within a month by granting reasonable time to reply. After the reply is filed, respondent no.3 should take a decision within a month thereafter and communicate it to the petitioner.

7. With the above observations, writ petition stands partly allowed.

(SHAILESH P. BRAHME, J.)

(S.G. MEHARE, J.)