



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

959 WRIT PETITION NO. 10975 OF 2022

VIMALA HARINARAYAN SHARMA

VERSUS

THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS

...

Advocate for the Petitioner : Mr. Murge Estling S.

Addl.GP for Respondent/State : Mr. S.D. Ghayal

Advocate for Respondent No.1 to 5 : Mr.Yadav Santosh R.

...

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

DATE : 05.12.2025

FINAL ORDER : (PER : ABASAHEB D. SHINDE, J.)

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

2. The petitioner before this Court is aggrieved by the recovery initiated by the Respondent/Authority by which the amount of Rs.1,81,231/- has been recovered from the petitioner under the garb of the amount being paid treating the technical break in service as general leave period and therefore, it is sought to be recovered from the petitioner.

3. Admittedly, the petitioner has retired from service on 31.08.2020 and the recovery is sought after retirement. Considering the fact that the petitioner was working as a Class-III employee and the payment

made to the petitioner is not granted/made under any misrepresentation or fraud, we are inclined to set aside the said recovery.

4. Though learned counsel for the Respondent Nos. 2 to 5 strenuously contend that, the impugned recovery is proper, since, the amount sought to be recovered has been paid to the petitioner though he was not entitled to be paid however, we find that this case is squarely covered by law laid down by the Apex Court in the case of **State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.** reported in **2015(4) SCC 334** wherein it is observed 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, summarize 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.”

5. Considering the aforesaid facts, we pass the following order :

ORDER

A) The Writ Petition is allowed in terms of prayer clause 'B' and 'C.

B) The Respondents are directed to refund the amount of Rs.1,81,231/- within a period of three months from today failing which the Respondents shall pay interest @ 6% p.a. on the delayed payment.

C) Rule is thus made absolute in above terms.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)

vsj..