2025:BHC-AUG:28352-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2754 OF 2019

Dattatraya s/o Kalu Patil
Age-58 years, Ocu-Retire.,
R/o-Anupam Society, Plot No. 25,
Gat No. 2/1, in front of Dadawadi,
Jalgaon Tq. Jalgaon Dist-Jalgaon. ..Petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary,
General Administration Department
Mantralaya Mumbai - 32.

2. The Divisional Commissioner,
Nashik Circle, Nashik Division Nashik.

3. The Zilla Parishad, Jalgaon,
At Jalgaon, Through Chief Officer.

4. The Zilla Parishad, Jalgaon
Through its Deputy Chief
Executive Officer at Jalgaon.

5. The Chief Account and Finance Officer
Zilla Parishad, Jalgaon
Tq. & Dist-Jalgaon.

6. The Block Development Officer,
Panchayat Samiti, Erandol,
Tq. Erandol Dist-Jalgaon ..Respondents

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Ms. Deepali Nikalje h/f Mr. Ajay G. Talhar, Advocate for Petitioner.
Ms. R.P. Gaur, AGP for Respondent Nos.1 & 2/State.
Mr. M.S. Sonawane, Advocate for Respondent Nos.3 to 6.

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

DATED : OCTOBER 01, 2025

ORAL JUDGMENT : (PER : ABASAHEB D. SHINDE, J.)

. By this writ petition filed under Article 226 of Constitution of India, the petitioner is seeking the following reliefs :

> *A) Rule be issued.*
> *B) Record and proceedings of this case be called for.*
> *C) By appropriate writ order or direction, order dated 11.06.2018 passed by the respondent No.3 Deputy Chief Executive Officer (General Administration) Zilla Parishad, Jalgaon thereby recovering the amount of Rs.1,35,513/- from the pension of the petitioner towards excess payment may kindly be quashed and set aside.*
> *D) By appropriate writ order or direction the order dated 15.01.2018 passed by the respondent No.5 Block Development Officer, Panchayat Samiti Erandol may kindly be quashed.*

2. It is the case of the petitioner that as the petitioner was possessing the requisite qualification, the respondent no.5 appointed the petitioner as Extension Officer Statistics by appointment order dated 19.10.1994. It is further contended by the petitioner that after having found that the petitioner is eligible for grant of higher pay scale, the respondent no.5 has awarded higher pay scale and increments to the petitioner as per the government policy.

3. It is also the case of the petitioner that while the petitioner was due for retirement on attaining the age of superannuation i.e. on 31.05.2018, the respondent no.5 has forwarded the proposal for grant of pensionary benefits in favour of the petitioner to respondent no.3 on 29.11.2007. Respondent no.6,

the Block Development Officer, Panchayat Samiti Erandol, however, issued an order dated 15.01.2018 thereby carrying out the revised pay fixation of the pay scale of the petitioner and on that basis held that the petitioner has been paid Rs.1,35,518/- in excess under wrong pay fixation. It is further contended by the petitioner that as stated earlier while the proposal for grant of pensionary benefits was submitted on 29.11.2017 i.e. before six months of the retirement of the petitioner, the said pay fixation was carried out and resultantly by an impugned order dated 11.06.2018, respondent no.4/Deputy Chief Executive Officer of the Zilla Parishad, Jalgaon recovered the said amount of Rs.1,35,518/- from the pensionary benefits of the petitioner. The petitioner therefore has approached this Court with the aforesaid prayers.

4. We have heard the learned counsel for the petitioner, learned AGP for respondent nos.1 and 2 and learned counsel for respondent nos.3 to 6.

5. Learned counsel for the petitioner would submit that the action of respondent no.6 in carrying out the revised pay fixation by impugned order dated 15.01.2018 and directing recovery of Rs.1,35,518/- towards alleged excess payment and the order dated 11.06.2018 passed by respondent no.4/Deputy Chief Executive Officer, Zilla Parishad, Jalgaon thereby recovering an amount of Rs.1,35,518/- towards alleged excess payment made to the petitioner

on the basis of revised pay fixation is arbitrary, unreasonable and against the principle of natural justice. Learned counsel for the petitioner would also further submit that the petitioner was working as a Class-III employee and in that view of the matter, respondent no.4/Deputy Chief Executive Officer, Zilla Parishad, Jalgaon ought not to have recovered an amount of Rs.1,35,518/- from the pensionary benefits of the petitioner, more so, just six months prior to the retirement of the petitioner. Learned counsel for the petitioner also submits that the excess payment made to the petitioner is not under any misrepresentation or by practicing fraud and, therefore, the said action of recovery ought not to have been initiated against the petitioner. Learned counsel for the petitioner would further contend that while the pay fixation of the petitioner was made way back in the year 2007 when the petitioner was working as Extension Officer, no undertaking was taken from the petitioner to the effect that, in case any excess amount is paid to the petitioner under mistaken pay fixation, the petitioner would refund the said excess payment and once it is found that the petitioner has received the said pay scale and payment without any mischief, misrepresentation or fraud, in that case the petitioner cannot be faulted with and the amount from pensionary benefits of the petitioner cannot be recovered.

6. On the other hand, learned counsel for respondent nos.3 to 6 has invited the attention of this Court to the affidavit in reply

filed on behalf of respondent nos.3 to 6 and would submit that the recovery from the pensionary benefits of the petitioner has been effected on the basis of written consent given by the petitioner on 12.02.2018. It is further contended in the affidavit in reply that since the recovery has been effected based upon consent given by the petitioner, the same cannot be termed as illegal or contrary to the provisions of law. Respondent nos.3 to 6 have further contended in their affidavit in reply that by virtue of certain guidelines published by the government vide circular dated 26.02.2019, the excess amount can be recovered if it is found that the pay fixation is wrong. It is further stated that in view of consent given by the petitioner, the revise pay fixation was made and after being found that the petitioner has been paid excess payment on the basis of wrong pay fixation made in the year 2007, respondent nos.3 to 6 have effected the recovery.

7. From the rival submissions of the learned counsel for the petitioner and learned counsel for respondent nos.3 to 6, we are of the considered view that the action of respondent nos.3 to 6 of carrying out the revised pay scale just before six months of petitioner's retirement and effecting recovery of excess payment on account of wrong pay fixation is erroneous. It is pertinent to note that while the pay fixation of the petitioner was carried out in the year 2007, admittedly, no undertaking whatsoever was obtained from the

petitioner stating that in case if the pay scale is revised or if the pay fixation is found to be incorrect, the petitioner would refund the entire amount paid in excess. Though respondent nos.3 to 6 are relying upon the so-called letter issued by the petitioner dated 12.02.2018 addressed to respondent no.6 stating that pursuant to the revised pay fixation, the petitioner is ready to refund the excess amount, however, we are of the considered view that the said so called letter purported to have been issued by the petitioner on which respondent nos.3 to 6 are harping upon cannot be termed as an undertaking.

8. After going through the said letter dated 12.02.2018 as has been observed, the same has been obtained from petitioner after the proposal of petitioner for grant of pensionary benefit was submitted by respondent no.5 to respondent no.3 on 29.11.2017, we therefore are of the considered view that the said letter cannot be termed as an undertaking for a simple reason that the manner and way in which the letter has been obtained from the petitioner shows that the employer has compelled the petitioner to issue such a letter since the petitioner is apprehensive that his retiral benefits would not be released unless the letter in the nature of undertaking is executed. We therefore are of the view that the so called letter cannot be said to have been given by petitioner out of his free will and would not amount to an estoppel against petitioner.

Even otherwise, in our opinion, such an undertaking will not have the same sanctity of undertaking executed when the fixation of revised pay scale was carried out.

9. We are also of the considered view that the case in hand is squarely covered by the law laid down by the Hon'ble Apex Court in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) etc, (2015) 4 SCC 334***, wherein the Hon'ble Apex Court has held in para 18 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, 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."*

10. Thus, in the light of observations of the Hon'ble Apex Court in the case of Rafiq Masih (supra), admittedly, (i) the pay scale

of the petitioner has been fixed in the year 2007, (ii) the petitioner was a Class (III) employee of respondent nos.3 to 6, (iii) the recovery from the pensionary benefits of the petitioner has been effected when the petitioner was due to retire within a period of six months of the said recovery. (iv) last but not the least, the excess payment has been made to the petitioner for a period in excess of five years before the order of recovery has been made. Therefore, the case of the petitioner is certainly falling within the guidelines issued by the Hon'ble Apex Court in the case of Rafiq Masih (supra).

11. We therefore allow the writ petition partly in terms of prayer clause (C) and (E) by further directing respondent no.4/Deputy Chief Executive Officer, Zilla Parishad, Jalgaon to repay the amount of Rs.1,35,518/- to the petitioner on or before 15.11.2025. In case, respondent no.4 fails to pay the said amount within the aforesaid period, respondent no.4 shall be liable to pay simple interest @ 6% p.a. on the delayed payment.

12. As far as prayer clause (D) put-forth by the petitioner thereby challenging the action of revised pay fixation initiated vide order dated 15.01.2018 issued by respondent no.5/Block Development Officer, Panchayat Samiti, Erandol is concerned, respondent no.5 is at liberty to issue a notice within 21 days from today to the petitioner calling upon the petitioner to show cause on the mistake in calculating the pay scale. After granting the petitioner

a reasonable opportunity of hearing, a reasoned order be passed within a period of 90 days from the date of issuance of notice. If the petitioner is aggrieved by the order of respondent no.6, he is at liberty to challenge the same.

13. We further observe that, after hearing the petitioner, if the mistake is noticed and correction is made by respondent no.5, the same shall be made effective prospectively and the pension of the petitioner shall be recalculated prospectively.

14. Rule is made absolute in above terms.

15. No order as to costs.

(ABASAHEB D. SHINDE, J.) **(R.G. AVACHAT, J.)**

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