



Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**WRIT PETITION NO. 616 OF 2024.**

Maria Aura Pereira, Age 59, w/o Cleto G.  
Pereira, Retired High Court Personal Assistant,  
R/o, H. No. 143/1 Zion Heights, Chimbél,  
Tiswadi, Goa. ... Petitioner.

*V e r s u s*

1. Registrar Administration High Court of  
Bombayat Goa, Penha De Franca,  
Porvorim, Bardez Goa.
2. Accountant General  
Office of the Accountant General  
(Accounts & Entitlement)-I,  
Maharashtra. ... Respondents.

Mr Laban Carvalho, Advocate for the petitioner.

Ms Neha Shirodkar, Advocate for respondent no.1.

Mr Vinod Joshi, Advocate for respondent no. 2 through VC.

**CORAM: M. S. KARNIK &  
NIVEDITA P. MEHTA, JJ.**

**DATE: 3<sup>rd</sup> March 2025.**

**JUDGMENT (PER NIVEDITA P. MEHTA, J.)**

1. Rule. Rule made returnable forthwith at the request and consent  
of the learned counsel for the parties.
2. Heard learned counsel for the respective parties.

3. By this Writ Petition, the petitioner seeks direction to quash the letter dated 24.5.2024 accompanied by a letter dated 24.02.2024 by the Respondents, calling upon the petitioner to refund the amount of Rs.2,80,000/- (Rupees two lakhs eighty thousand only) which was received by her as pensionary benefits under the head, General Provident Fund (hereinafter referred to as “GPF”).

4. Briefly, the facts are that the Petitioner joined the service as Lower Division Clerk (LDC) in the District Court, North Goa, Panaji on 1.9.1991 and thereafter she was appointed as Stenographer (Higher Grade) in the High Court of Bombay at Goa by letter of appointment dated 24.06.1999. Subsequently, the petitioner served as a Personal Assistant to the Judge of the High Court of Bombay at Goa from 22.08.2019 till her voluntary retirement on 7.12.2021. The pay-scale associated with the position of Personal Assistant to the Judge of the High Court is as per the 7th pay commission matrix-level 10.

5. The petitioner received a letter dated 24.05.2024 from the High Court of Bombay at Goa, along with another letter dated 24.2.2024 from the Office of the Accountant General (Accounts & Entitlement)-I, Maharashtra, instructing the Registry to recover an amount of Rs. 2,80,000/- (Rupees two lakhs eighty thousand only) from the petitioner, which was the amount that was received by the petitioner as pensionary benefits under the head, GPF. The petitioner submitted a

representation dated 18.6.2024 to respondent No. 1. However, the said representation has not been decided as of yet. The petitioner asserts that the recovery of money sought by the respondents is a consequence of the fault of the respondents, therefore, it cannot be claimed from the petitioner. Hence this petition.

6. Respondent no.1 in their reply stated that the petitioner sought voluntary retirement and the same was duly accepted. The petitioner was granted approval under Rule 16(E) of the Maharashtra General Provident Fund Rules, 1998, to withdraw a non-refundable sum of Rs.3,00,000/- (Rupees three lakhs only) from her GPF account to meet her expenses in connection with the purchase of a motor- vehicle. The said sanction was communicated to the petitioner vide sanction order dated 24.11.2020. Vide Form VIII-A dated 7.12.2021, the petitioner sought payment of the amount standing to her credit in the General Provident Fund. The application was forwarded to respondent No.2 for action and payment. Respondent no.2 duly paid the petitioner the amount of Rs. 3,00,000/-(Rupees three lakhs only) from her General Provident Fund. Respondent no.2 intimated respondent no.1 vide letter dated 20.2.2024, that the amount of Rs.3,00,000/- (Rupees three lakhs only) was sanctioned to the petitioner towards withdrawal of a non-refundable amount from GPF account in December 2020 and the same was not adjusted when the final GPF payment of Rs.20,70,517/- (Rupees twenty lakhs seventy thousand and five hundred and

seventeen only) was made. Respondent no. 1 vide letter dated 24.5.2024, forwarded the letter dated 20.2.2024 received from respondent no. 2 to the petitioner, informing her that a recovery of Rs. 2,80,000/- (Rupees two lakhs eighty thousand only) was to be effected and requested her to deposit the specified amount into the account details provided in the letter.

7. In response to the letter dated 24.05.2024, the petitioner submitted a representation dated 18.06.2024 to respondent no.1, urging that the amount of Rs.2,80,000/- (Rupees two lakhs eighty thousand only) should not be recovered, relying in the decision in *State of Punjab and others vs. Rafiq Masih (white washer) and others, (2015) 4 SCC 334* of the Hon'ble Supreme Court.

8. Respondent no.2 was informed about the representation dated 18.06.2024 made by the petitioner for their information and to take necessary action. In a letter dated 21.08.2024, respondent no.2 was informed that the petitioner was accorded sanction for withdrawal of a Non-Refundable amount of Rs.3,00,000/- (Rupees three lakhs only) from her GPF Account and the said bill was passed by the Directorate of Accounts, Government of Goa, vide voucher dated 02.12.2020 and the said amount was duly refunded to the Directorate of Accounts, by respondent no.2.

9. Respondent no.2 in their reply to the petition stated that the role of the answering respondent in the capacity of Audit Officer of the State of Maharashtra in matters related to GPF benefits of the retired employee, is limited to the scrutiny of the proposal received from the Head of Office from where the employee has retired or quit service and to authorize the concerned disbursing authority to make final refund to the GPF subscriber of the State Government in light of the provisions contained in Maharashtra General Provident Fund Rules 1998 and with reference to Government Resolution issued from time to time. Respondent no.2 further stated that on reviewing the record of the petitioner it was found that a non-refundable amount (hereinafter referred to as “NRA”) of Rs. 3,00,000/- (Rupees three lakhs only) was sanctioned to the petitioner in December 2020 and drawn by her. The said amount was not reflected in the petitioner’s GPF account. In the year 2021, due to COVID-19 pandemic, not all offices were functioning at full capacity. The office of respondent no. 2 received the case of the petitioner on 19.01.2022. Despite constraints due to the COVID-19 pandemic, the case was finalized and her GPF authority was issued on 1.02.2022. The petitioner took voluntary retirement on 8.12.2021 and during the aforesaid period, the petitioner was fully aware of the fact that she had obtained an NRA in December 2020, and it was incumbent upon her to fill in the necessary information in her final GPF application. It is stated by respondent no.2 that respondent no.1

failed to rectify the errors in the GPF account before finalizing the GPF case of the petitioner. Respondent no.2 submits that as per Rule 134 A of the Maharashtra Civil Services (Pension) Rules, 1982, recovery and adjustment of excess amount paid wrongly must be recovered as per the instructions given by the Drawing and Disbursing Officer.

**10.** The learned Counsel for the petitioner made submissions as under:-

a) The petitioner was accorded sanction as per Rule 16(E) of the Maharashtra General Provident Fund Rules 1998 for withdrawing a non-refundable amount of Rs. 3,00,00/- (Rupees three lakhs only) from the General Provident Fund Account without giving any undertaking. The petitioner has sought voluntary retirement and the same was accepted by the respondent no.1 vide order dated 07.12.2021. The petitioner sought payment of the amount standing to her credit in General Provident Fund Account No. AJ/MH/26992 vide Form VIII-A and has not opted for the continued retention of the GPF in the fund in terms O.M. No. F. 28 (22) EV/57 dated 18.12.1957 of the Ministry of Finance.

b) The petitioner's final payment of G.P.F. amounted to a sum of Rs. 20,70,517/-. (Rupees twenty lakhs seventy thousand five hundred and seventeen only). The petitioner was paid the said amount without any misrepresentation or fraud on her part. It was the duty of the

respondents to adjust any pending dues before the release of the final amount. Nearly three years after the voluntary retirement of the petitioner, recovery of Rs. 2,80,000/-( Rupees two lakhs eighty thousand only) is sought by the respondents. No fault can be attributed to the petitioner.

c)The undertaking brought on record does not pertain to the amount of release by way of the sanction order dated 24.11.2020 and the same cannot be considered a blanket undertaking and, therefore, the same cannot be said to apply to the sanction order dated 02.12.2020.

d) Reliance is placed on the judgment of the Hon'ble Apex Court of *State of Punjab and others Vs. Rafiq Masih (white washer), 2015 (4) SCC334, The State of Madhya Pradesh Vs. Madan Lal Bardele...., (M.P.High Court); Mohd. Yusuf Vs. Maharana Pratap Agriculture and Technology University, Civil Special Appeal (W) no. 349/2004 (High Court of Rajasthan at Jodhpur), Durgeshwar Dutta Vs. State of Assam and others WP (C) No. 7355/2019 (High Court of Gauhati); Shankar Narayan Chakravaorty Vs. State of Chhattisgarh and others in WP (S) no. 9716/2019 (High Court of Chhatisgarh); Jaynal Alam Vs. State of West Bengal and others in W.P.9934(W) of 2017 (High Court Calcutta); and High Court of Madhya Pradesh Larger Bench in Writ Appeal No. 815/2017.*

e) The over payment has been made by the respondents for which the petitioner was never at fault therefore it would not be proper on the part of the respondents to recover the excess amount paid in favour of the petitioner. Further it is submitted by the petitioner that the reliance placed by the respondents on *Jagdev Singh* (supra) based on execution of the undertaking is misplaced and requested the Court to consider the citations mentioned in the above paragraph.

11. The counsel for the respondent no.1 advanced arguments as under:

a) The petitioner was accorded sanction for withdrawal of a Non-Refundable amount of Rs. 3,00,000/- (Rupees three lakhs only) from her GPF account and the said bill was passed by respondent no.2 vide voucher dated 02.12.2020. On 6.01.2022 the application for final payment of the GPF amount of the petitioner was forwarded to the office of respondent no.2 after the sanctioned amount of Rs.3,00,000/- (Rupees three lakhs only) was adjusted and reimbursed by respondent no.2.

b) The Petitioner had knowingly and voluntarily executed “Undertaking” on 18.09.2009, 05.05.2016, 14.01.2019 and 14.12.2021 to refund the amount of excess payment due to discrepancies noticed later or due to incorrect pay fixation or to adjust such excess amount against the future payments due to the petitioner. In view of the said

undertakings the ratio laid down by the Hon'ble Apex Court in Rafiq Masih ( supra) would not be applicable. The reliance was placed on the judgment of the Hon'ble Apex Court in the later judgment of the High Court of Punjab and Haryana Vs. Jagdev Singh (2016) 14 SCC 267; as the judgment above carves out exception to the law laid down in Rafiq Masih (supra). The petitioner was a Class I (Group A) employee and had obtained the amount for the purchase of the motor vehicle. In Rafiq Masih (supra) cannot be applied as in the aforesaid ruling the recovery was not permitted specifically in Group III and Group IV employees.

**12.** The Learned Counsel for the respondent no.2 argued as thus:-

a) The office of respondent no.2 does not act on its own volition. It cannot authorize payment of Provident Fund benefits without receipt of proper application from the Department in accordance with the provisions laid down in the Rules. Every year, the Annual GPF slips are issued to the subscriber and hosted at the State Government Portal through the Director of Accounts and Treasuries. Therefore, if any discrepancies in credit and debits are found and noticed, it is obligatory on the part of the subscriber to inform, so that necessary action to rectify the errors in the subscriber's GPF account before the finalization of the GPF case.

b) The reference to the ruling of Rafiq Masih (supra) of the Hon'ble Supreme Court does not hold any ground in respect of the petitioner as the aforesaid ruling concerns excess payment of pay and allowances due to fixation of pay. In the present case a non refundable amount of Rs. 3,00,000/- (Rupees three lakhs only) was sanctioned in December 2020 and excess payment was made due to no information rendered in the Part II application which was not checked by respondent no.1, twelve months before retirement and should have been checked by the petitioner as the subscriber before signing it.

c) As per Rule 134-A of the Maharashtra Civil (Pension) Rules, 1982- Recovery and adjustment of excess amount paid- any Government amounts paid wrongly to the subscriber/ pensioner must be recovered in case/ or from the retirement benefits i.e., Gratuity or Pension arrears etc. as per the instructions given by the Drawing and Disbursing Officer. Respondent no.2 placed reliance on the judgment of the Hon'ble Apex Court in *Chandi Prasad Uniyal Vs. State of Uttarakhand* (2012)8 SCC 417.

13. Having heard the learned counsel for the petitioner, learned counsel for respondent no. 1 and learned counsel for respondent no. 2 the point for consideration in this petition is Whether the amount sanctioned against the GPF account for the purchase of Motor Vehicle,

of the petitioner Class-A employee can be recovered after her voluntary retirement?

14. The judgments referred by the petitioner above are on the peculiar facts and circumstances of employees of Group III and Group IV or those occupying lower posts in the administrative hierarchy who were retired or were on the verge of retirement.

15. In the context of the present case, reference to Rule 134-A of the Maharashtra Civil Services (Pension) Rules 1999 is material which reads thus:

*“134-A-Recovery and adjustment of excess amount paid – If in the case of a Government servant, who has retired or has been allowed to retire, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including] Service rendered upon re-employment after retirement or any amount is found to be payable by the pensioner during such period and which has not been paid by , or recovered from him, then the excess amount so paid or the amount so found payable shall be recovered from the amount of pension sanctioned to him:*

*Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him :*

*Provided further that, the amount found due may be recovered from the pensioner in instalment so that the amount of pension is not reduced below the minimum fixed by Government.”*

The plain reading of the Rule contemplates recovery from a Government Servant, the same must be enforced to seek recovery.

**16.** Reference was made to the ruling of the larger Bench in the State of Punjab Vs. Rafiq Masih (2015) 4 SCC 334, wherein the Hon'ble Supreme Court opined at paragraph 18 that :

*“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 employers, 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 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.”*

17. It is pertinent to place reliance on paragraph 7 in *Rafiq Masih* (supra) which reads as follows:-

*“7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, “for doing complete justice in any cause” would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.”*

18. The question of recovery will have to be seen in the context of the factual matrix and no straight jacket formula can be prescribed.
19. Presently we are dealing with a case where an employee is a Class I (Group A) employee who has sought a non-refundable amount against her GPF account and has opted for voluntary retirement. The decision in the *Rafiq Masih* (supra) is made available to group ‘C’ and

‘D’ employees, certainly not against the well-qualified Personal Assistant to High Court Judge, Grade ‘A’. An employee who is at a lower rung finds it difficult to face the financial situation, therefore the aforesaid decision cannot be applied to the case at hand.

**20.** In the instant case, the petitioner, a Class I employee to whom the payment was made in the first instance was placed on notice that any payment found to have been made in excess would be required to be refunded. The petitioner had furnished an undertaking while opting for voluntary retirement and therefore the petitioner is bound by the undertaking. The petitioner does not fall within any of the classes of the employees mentioned in Rafiq Masih (supra) as the petitioner is admittedly part of group ‘A’ services of the Government and does not belong to group ‘C’ or ‘D’. The action of respondents to take steps to recover excess money paid is neither harsh nor arbitrary and the absence of fraud or misrepresentation on the part of the petitioner does not preclude an employer’s right to recover money paid in excess. Further, the various judgments relied upon by the petitioner are distinguishable on facts. .

**21.** This is case where tax payers money is wrongly paid to the petitioner. Respondents have specifically submitted that the petitioner has given an undertaking dated 14.12.2021 which is reproduced thus:-

**CONSENT FROM THE PENSIONER**

*I the undersigned Maria Aura Pereira, Personal Assistant to Hon'ble Judge hereby give my consent to the Pension Sanctioning Authority / Audit Officer to recover pension / relief / Gratuity and any Government dues against me that have unrecovered and or excess payment of pension, family pension. Gratuity, relief made me.*

*Place: Panaji-Goa.*

*Date: 14/12/202*

*Signature sd/-*

*(Maria Aura Pereira )*

**UNDERTAKING FROM THE PENSIONER**

*I, the undersigned Maria Aura Pereira, Personal Assistant to Hon'ble Judge hereby undertake to refund the excess amount of pension, family pension, relief incase the pension, family pension, Gratuity, relief sanctioned authorised to me Is later found to be in excess to what | am actually entitled to under the rules.*

*Place: Panaji-Goa.*

*Date: 14/12/2021*

*Signature Sd/-  
(Maria Aura Pereira )*

**22.** In *Chandi Prasad Uniyal* (supra), the Hon'ble Supreme Court has opined that:

*“14. We are concerned with the excess payment of public money which is often described as “taxpayers' money” which belongs neither to the officers who have*

*effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”*

**23.** In *Jagdev Singh*,(surpa) the Hon’ble Supreme Court held as under:-

*“9 The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.*

10. *In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc.*<sup>1</sup>. this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.” (emphasis supplied).

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

**24.** In view of the ratios laid down in the aforesaid decisions of the Hon'ble Supreme Court, we are of the considered view that except when a case of hardship is made out or under circumstances as expressly contemplated in Rafiq Masih (supra) as well as a catena of judgments by the Hon'ble Supreme Court, generally, excess payment covered squarely by an undertaking whereby the signatory promises to return the excess amount should be recoverable.

**25.** Thus, in view of the aforesaid, we are of the view that the petitioner has no vested right to the amount paid to her in excess of what she was otherwise entitled to. Public money wrongly paid should be recovered. No undue hardship will be caused to the petitioner who was holding a Class I (Group A) Cadre post. However, the recovery of the outstanding GPF shall be made in 18 months in equal monetary instalments from the pension payable every month to the petitioners. We are not inclined to grant longer time as requested by learned counsel for the petitioner.

**26.** The petition is disposed of in the above terms. Rule stands disposed of accordingly. No costs.

**NIVEDITA P. MEHTA, J.**

**M. S. KARNIK, J.**