

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 21 OF 2025**

Luis Santana Rosario Estibeiro, aged 62
years, retired Bailiff, R/o H. No. V-180,
Mhalea-Tollem, Panchawadi, Ponda,
Goa.

... PETITIONER

Versus

1. The Registrar, Goa State Consumer
Disputes Redressal Commission,
State of Goa, 5th Floor, Junta House
Building, Panaji-Goa.
2. The Department of Civil Supplies
and Consumer Affairs, Through its
Director, II-Floor, Junta House
Building, Panaji-Goa.
3. The State of Goa, Through Chief
Secretary, Administrative Block,
Porvorim-Goa.

... RESPONDENTS

Mr. Vallabh D. Pangam, Advocate for the Petitioner.

Mr. Devidas J. Pangam, Advocate General with Mr. Geetesh
Shetye, Additional Government Advocate for the Respondents.

**CORAM: ALOK ARADHE, CJ. &
M. S. SONAK, J.**

DATED: 13th MARCH 2025

ORAL JUDGMENT: [per M.S. Sonak, J.]

1. Heard Mr. Vallabh Pangam, learned Counsel for the
Petitioner and the learned Advocate General appearing along with
Mr. Shetye, learned Additional Government Advocate for the
Respondents.

2. Rule. The Rule is made returnable immediately at the request and with the consent of the learned Counsel for the parties.

3. The Petitioner is a Group 'D' employee, who retired as a Bailiff from the Consumer Affairs Division, Department of Civil Supplies and Consumer Affairs, State of Goa on 29.04.2022. The Petitioner's retiral dues were paid after deducting an amount of Rs.1,82,587/- on the grounds of incorrect pay fixation. There is no allegation that the Petitioner was in any manner responsible for this alleged incorrect pay fixation. There is also no record of any compliance with the principles of natural justice and fair play before this conclusion was reached and deduction made.

4. Mr. Vallabh Pangam relied on the decision of the Hon'ble Supreme Court in the case of **Thomas Daniel Vs. State of Kerala & Others, 2022 AIR (SC) 2153** and **State of Punjab & Others Vs. Rafiq Masih (White Washer) & Others, 2015 4 SCC 334**, to submit that no recoveries could be made from a Group 'D' employee, post-retirement.

5. Mr. Vallabh Pangam also relied upon the office memorandum dated 07.03.2017 read with the office memorandum dated 02.03.2016, to submit that recoveries were

contrary to law and in breach of the decision of the Hon'ble Supreme Court in **Rafiq Masih** (supra).

6. In **Rafiq Masih** (supra), the Hon'ble Supreme Court has summarized certain 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. Based on the decision of the Hon'ble Supreme Court, the Central Government has issued an office memorandum dated

02.03.2016, which has been adopted by the State Government dated 07.03.2017.

8. The recoveries in the present case are in breach of the office memoranda and the decision of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra). Learned Advocate General fairly did not defend the recoveries and stated that this amount of Rs.1,82,587/- would be paid to the Petitioner within two months from today.

9. Accordingly, we set aside the order dated 27.09.2024 and direct the Respondents to refund the amount of Rs.1,82,587/- as expeditiously as possible and in any event, within two months from today. However, if there is any delay in refunding the said amount, then this amount shall carry interest at the rate of 6% per annum from the date this amount became due i.e. the date on which the other retiral benefits were paid to the Petitioner, till actual payment.

10. The Rule is made absolute in the above terms with no cost order.

M. S. SONAK, J.

CHIEF JUSTICE