IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12433 OF 2023

1. Vasudev Surbaji Rane.
Age: 60 years, Occ. Retired,
residing at post Baparde, Raanewadi,
Tal: Devgad, Dist : Sindhudurg.

2. Madhusudhan Manohar Bhalekar.
Age:64 years, Occupation: Retired,
residing at Shikshak Colony,
Grahwaadi, Kalmath,
Tal: Kankavli, Dist: Sindhudurg.

3. Sahdev Shankar Sawant.
Age:64 years, Occupation: Retired,
Residing at Post Salgaon, Jambharmala,
Malawadi Tal: Kudal, Dist: Sindhudurg.

4. Arun Rama Kanse
Age: 64 years, Occupation: Retired,
Residing at Post Mazgaon, Varchiwadi
Tal: Sawantwadi, Dist: Sindhudurg.

5. Tukaram Madnaji Kadam.
Age years, Occupation: Retired,
residing at BD-1, Parulekar Garden
Railway Station Road, Siddhivinayak
Hall, Tal: Kudal, Dist: Sindhudurg.

6. Prakash Mahadev Parab.
Age: years, Occupation: Retired,
residing at, House no. 992 Sankalp Siddhi)
Niwas, Ranbambuli Parabwadi
Tal: Kudal, Dist: Sindhudurg.

7. Nandkumar Sonu Khobrekar.
Age:64 years, Occupation: Retired, Age:64
residing at Post Devbagh,

Tal: Karwar District Karwar.

8. Subhash Shivram Talekar.
Age : 65 years, Occupation: Retired,
residing at Post Talere, Audumbarnagar,
Tal: Sindhudurg.

9. Anant Gopal Supal.
Age:69 years, Occupation: Retired,
Residing at Post Osargaon, Kansaliwadi
Tal: Kankavli, Dist: Sindhgudurg

10. Kashinath Mahadev Kanekar.
Age:64 years, Occupation: Retired,
residing at Residing at Post Kolgaon,
Bhogfaujdarwadi Tal: Sawantwadi
Dist: Sindhudurg.

11. Anant Keshav Desai.
Age: 62 years, Occupation: Retired,
residing at Post Kalsuli, Lingeshwarnagar
Tal. Kankavli, Dist: Sindhudurg.

12. Dattatray Vinayak Sawant.
Age:64years, Occupation: Retired,
residing at post Kalmath Lanjewadi
Lakshman Nagar, House No. 1258
Tal: Kankakavli Dist: Sindhudurg. … Petitioners

Versus

1. State of Maharashtra.
through Government Pleader,
High Court, Bombay.

2. Director General of Police,
Maharashtra State, having office at
Colaba, Mumbai 400005.

3. Inspector General of Police
(Administration) having office at

Director General of Police,
Colaba, Mumbai 400005.

4. District Superintendent of Police,
having office at Oras, District
Sindhudurg.

5. Principal Accountant General (A& E),
having office at Mantralaya, Mumbai. … Respondents.

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Mr. Abhay S. Khandeparkar, Sr. Advocate a/w. Mr. Sangram Desai, Mr. Rushikesh G. Bhagat i/b. Khandeparkar & Associates, for the Petitioner.

Mr. S.H. Kankal, AGP for Respondent/State.

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CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.

DATE : 5th MARCH, 2025

<u>ORAL JUDGMENT : (ASHWIN D. BHOBE, J)</u>

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By this Petition, Petitioners all retired Assistant Sub-Inspectors (Class III employee), are before this Court making a grievance of the recovery of amount from their retiral benefits ordered by the Respondent No. 4.

3. **<u>FACTUAL MATRIX :</u>**

(a) Petitioners were employed in the constabulary of the Maharashtra Police, in the category of Class III employees.

(b) Petitioners retired as Assistant Sub-Inspectors upon attaining the age of superannuation.

(c) On the verge of retirement, recovery was claimed and effectuated against the Petitioners by the Respondent No. 4 on the ground that the Petitioners were given wrong pay fixation, as such excess amount was paid to them by way of salary. Recovery was thus ordered from the retiral benefits of the Petitioners.

(d) Petitioners who were retiring had no alternative but to pay the amounts to the State treasury .

(e) Petitioners are thus before this Court seeking a directions to the Respondents to refund the amounts, which the Petitioners were compelled to pay, post their retirement from their retiral benefits. Petitioners have prayed for the following substantive relief :

> "*(a) this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ, order or direction under Article 226 of the Constitution of India, directing the Respondents to forthwith refund to the Petitioners the illegally recovered amounts in accordance with the Judgment of the Aurangabad Bench of this Hon'ble Court in Writ Petition No. 695 of 2016."*

4. Respondents filed their affidavit in reply dated 27.11.2024, opposing the petition.

5. On 20.02.2025 this Court passed the following order :

> *"1. An affidavit in reply, sworn on 27th November, 2024, is tendered across the bar (photostat copy), today. The original is not on record.*
> *2. On the point of whether an undertaking was tendered by any of these Petitioners, much prior to the actual recovery of money, is not dealt with by the State. So also, whether an opportunity of hearing was granted or not, before deducting the amounts, in some cases being large amounts, has also not been dealt with by the State in its affidavit.*
> *3. In order to give an opportunity to the learned AGP, on his request, list this Petition on 5th March, 2025, in the same "disposal category".*
> *4. If desired, an additional affidavit can be filed provided it is delivered to the Petitioners at least one week prior to the returnable date."*

6. The learned AGP pursuant to the order dated 27.2.2025, has today placed on record additional affidavit dated 04.03.2025 filed by the Superintendent of Police. Paragraphs 3, 4 and 5 of the affidavit are extracted herein below :

> *3. The above mentioned Petitioners were employed in the constabulary of the Maharashtra Police and was promoted as ASI and was continued to hold the said post till the date retirement. I say that before retirement of all these petitioners. The service books were sent for pay verification unit for approval of Pension. The Account Pay Verification Team raised an objection regarding pay fixed at the time of granting the promotion.*
>
> *4. I say that Respondents for the first time it was acknowledged that, the Petitioners have sanctioned excess*

pay, but, no show cause notice was issued to the Petitioners, and was issued the demand notice as per account Pay Verification Team objections. The said demand notice has been duly satisfied by the Petitioners and did not raise any objection at the time of depositing the excess payment by the Petitioner and has deposited the same unconditionally.

5. I say that, the Petitioners have not even claimed that the said payment was deposited without prejudice. The Petitioners have no right to claim the said amount after depositing the same. I say that since the excess payment at the time of pay fixation was sanctioned was not known by the Respondents and never acknowledged at any point of time. Therefore, no show cause notice was issued to the Petitioners and hearing was not offered. I say that the Petitioners have been granted promotions long back and there was no Indemnity Bond has been signed by them at the time of accepting the promotion as "Assistant Sub-Inspector". Therefore, the Petitioners have neither granted the opportunity of hearing nor submitted the Indemnity Bond at the time of accepting promotion. I say that, the recovery came to be initiated pursuant to the objection raised by account payable Verification Team, therefore, demand was raised against the Petitioners. The said amount has also been deposited by the Petitioners and the same have been duly satisfied after long back i.e. in the year 2016.

7. <u>SUBMISSIONS :</u>

(a) Mr. Abhay S. Khandeparkar, Sr. Counsel for the Petitioners submits that the excess amount claimed by the Respondent No. 4 has been claimed because of the alleged wrong fixation of pay done by Respondent No. 4. He submits that it is not the case of Respondents that the said excess payment has been made on account of any fraud or misrepresentation, for which the Petitioners have been instrumental. To support his submissions he relies on the decision of the Hon'ble Supreme Court in the case of the *State of Punjab and Ors. v/s. Rafiq Masih (White Washer) & Ors.*[1] and the decision of the co-ordinate bench of this Court in the case of *Suresh Gunaji Warang & Ors. v/s. The State of Maharashtra & Ors.*[2]. He submits that the said recovery ordered by the Respondents is bad in law and therefore, prays that the petition be allowed.

(b) Mr. S.N. Kankal, learned AGP for the Respondents/State has strenuously opposed the Petition. He submits that the recovery of the said amount from the Petitioners is effected in the year 2016, whereas the Petition is filed in the month of January, 2023, thus being barred by delay and latches. He further submits that the error in payment of the excess amount was detected by the Account Pay Verification Team, when the service books of the Petitioners were received by them for processing their pension. He therefore, submits that the Respondents would be well within their right to recover the excess payments made to the Petitioners, which the Petitioners were not entitled to. He fairly submits that neither show cause notice was issued to the Petitioners nor

1 (2015) 4 SCC 334.
2 WP No. 7778 of 2021 decided on 19th July, 2022.

were the Petitioners heard prior to recovery of the said amount. On the basis of the above contentions and the reasons submitted in the replies filed by the Respondent No. 4, he seeks dismissal of the Petition.

8. From the rival contentions, the question that falls for determination would be whether the recovery of the excess unauthorised payment made to the Petitioners who have retired would cause hardship to the Petitioners ?

9. **<u>ANALYSIS :</u>**

(a) Fact of the Petitioners being Class III employee and having retired from service as Assistant Sub-Inspectors is not in dispute.

(b) In the case of *Sayyed Abdul Quadir & Ors. v/s. State of Bihar & Ors.*[3], the Hon'ble Supreme Court in paragraph 57, 58 and 59 has enunciated the law as under :

> *"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.*
>
> *58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But,*

3 (2009) 3 SCC 475

> *if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Gangaram v. Director, Col. B.J. Akkara [Retd.] v. Government of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank V. Manjeet Singh and Bihar SEB V. Bijay Bhadur.*
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> *59. Undoubtedly, the excess amount that has been paid to the appellants teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants teachers should be made."*

10. The position of law in this regards is made clear in the case of *State of Punjab and Ors. v/s. Rafiq Masih (White Washer)* (supra), wherein it is observed that excess unauthorized payment made to the employee, is not to be recovered from the retired employee or employee

about to retire, as making of recovery would cause extreme hardships to the retired employee.

11. In the case of High Court of *Punjab and Haryana and other Versus Jagdev Singh*[4], while deciding the issue with regard to the permissibility of the recovery of excess amount paid post retirement, the Hon'ble Supreme Court has observed as under:

> *"10 In State of Punjab v. Rafiq Masih 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: (SCC pp.334-35)*
> *(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).*

12. A useful reference can be made to the decision of the co-ordinate bench in the case of *Suresh Gunaji Warang*(supra), dealing with a similar

4 (2016) 14 SCC 267

case wherein recovery was effected from Assistant Sub-Inspector/Head Constables, from their retiral benefits on the ground of excess amount being paid due to wrong pay fixation. This Court by relying on the Judgment of the Hon'ble Supreme Court in the case of *State of Punjab and Ors. v/s. Rafiq Masih (White Washer)* (supra), directed the Respondents to refund the amount recovered from the retiral benefits of the Petitioners.

13. Having considered the law settled by the Hon'ble Supreme Court with regard to recovery of any dues from retiral benefits of employee and having regard to the facts and circumstances of this case, we hold that the Respondents have no right to carry out any recovery from the retiral benefits of the Petitioners.

14. We therefore, hold that the recovery made by the Respondent No. 4 from the Petitioners is illegal and consequently direct the Respondents to refund the entire amount recovered from the Petitioners, with interest @ 6% p.a.. However, considering the fact that the amounts were recovered from the Petitioners in the year 2016 and the Petitioners having approached this Court in the year 2023, the Petitioners would not be entitled to interest for the said period. Interest shall be paid on the said amount from the date of filling of this petition till actual payment. The said amount shall be paid to the Petitioners within 45 days from

today. In the event of delay in payment of the said amount alongwith interest, beyond the period of 45 days, then the interest @ of 6% p.a. payable on the said amount would be recovered from the salary of the person responsible for the delay in payment.

15. Rule is made absolute in the above terms.

(ASHWIN D. BHOBE, J.) **(RAVINDRA V. GHUGE, J.)**