

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12571 OF 2023

Gautam Nagorao Gaikawad

... Petitioner

Versus

The State of Maharashtra

Through Department of Energy,

Mantralaya, Mumbai & Ors.

... Respondents

Mr. Mohansingh U. Rajput for the Petitioner.

Mr. S.B. Kalel, A.G.P. for the Respondent No.1-State.

Mr. Prashant Chavan (Through V.C.) for Respondent Nos.2 to 7.

Coram : M. S. Karnik &
Sharmila U. Deshmukh, JJ.

Date : 10th October 2025.

ORDER (Per : Sharmila U. Deshmukh, J.)

1. The Petition seeks quashing of the office remark dated 28th June 2023 passed by the Respondent Nos.5 to 7 i.e. the officials of the Maharashtra State Electricity Distribution Company Limited (for short, “M.S.E.D.C.L.”) along with the final leave encashment docket voucher dated 30th June 2023 for the recovery of Rs. 15,26,343/- from the

Petitioner's retirement benefits and to further quash and set-aside the communication dated 4th August 2023, issued by the Chief Engineer of M.S.E.D.C.L..

2. Learned counsel appearing for the Petitioner submitted that the Petitioner joined services of Respondent No.2-Company as Junior Engineer on 7th November 1989, was promoted as Assistant Engineer in 1992 and as Deputy Engineer in 2003.

3. In the 63rd Departmental Examination held on 29th October 2002, the Petitioner was having experience of above 12 years and scored 28 marks in one paper, 48.5 marks in another paper and 22 marks in one another paper and on 2nd September 2003, in the 64th Departmental Examination, the Petitioner appeared for two papers and scored 65 marks and 43 marks therein. It is further submitted that there was no communication since the last examination till the date of retirement of the Petitioner, who retired on 30th June 2023 as Superintendent, Satara Circle and there is not even a single complaint in the entire service record. He submits that on 30th June 2023, the Petitioner was informed about the alleged recovery of Rs.15,26,346/- from the leave encashment on the date of retirement.

4. He submits that the Petitioner's case is squarely covered by the decision of the Hon'ble Apex Court in the case of *State of Punjab Vs.*

Rafiq Masih (White Washer)¹. He submits that pursuant to the decision of the Hon'ble Apex Court the State Government had passed G.R. on 17th August 2023 bringing decision of the Hon'ble Apex Court to the notice of all the concerned departments.

5. Learned counsel for the Petitioner upon a query by this Court, on instructions, would submit that the Petitioner would not press for the grant of interest as prayed in prayer clause (B) and would confine his relief only to prayer clause (A).

6. Mr. Chavan, learned Senior Advocate appearing for the Respondent Nos.2 to 7 would submit that the Petitioner has been inadvertently granted increments without having passed the provisional examination i.e. 63rd and 64th Departmental Examination, as the Petitioner was absent for some of the papers. He submits that it is only in 2023, it was noticed that the Petitioner has been granted increments during the period 1993 to 2010 without having passed the Professional Examination. He submits that the State Government had issued the Government Circular dated 22nd November 2021 for taking undertaking from the employees, pursuant to which on 20th June 2022, the Petitioner had executed an undertaking which is binding. He submits that accordingly the recovery of the excess amount was recommended from the retirement benefits of

1 2015 (4) SCC 334

the Petitioner.

7. We have considered the submissions and perused the record.

8. The facts are undisputed. The recovery of the purported excess amount is by virtue of the increments, which were granted to the Petitioner pursuant to the examinations which were held in 2002 and 2003. The recovery is thus for a period of more than five years prior to the order of recovery. It is the specific plea in the Petition that the period of purported excess payment is from 1993 to 2010, which is sought to be recovered on 30th June 2023, which is not been disputed in the Affidavit-in-Reply filed by the Respondent Nos. 2 to 7. The present case is squarely covered by the decision of the Hon'ble Apex Court in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** (supra). The Hon'ble Apex Court has held in para No.12 as under :

“12. 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, 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."

9. It has been held by the Hon'ble Apex Court that the recovery from the employees when excess payment has been made for a period in excess of five years, before the order of recovery is issued is impermissible in law. The decision of the Hon'ble Apex Court is squarely applicable to the present case and as the recovery has been sought to made in respect of the period from 1993 to 2010, the Petition deserves to be allowed and is hereby allowed in terms of prayer clause (A).

[Sharmila U. Deshmukh, J.]

[M. S. Karnik, J.]

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