Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6446 OF 2024

Prakash Shivram Salvi,
Age- 60 years, Occ.-Retired,
R/o.B-1706, Lotus Building,
Gawand Bagh, Near Upwan Lake,
Pokhran Road, No. 2, Thane West 400 610 **…Petitioner**

~ versus ~

1. **The State of Maharashtra,**
   Through its Additional Chief Secretary,
   Home Department, Mantralaya,
   Mumbai.
2. **The Director General of Police,**
   S.B.S. Marg, Colaba, Mumbai.
3. **Principal Accountant General (A and E),**
   101, Maharshi Karve Road,
   Pratishtha Bhavan, 2nd Floor,
   Churchgate, Mumbai 400 020.
4. **Director of Accountants and Treasuries,**
   Thakarshi House, 3rd Floor, Shoorji
   Vallabha's Marg, Near Foreign Post,
   Ballard Pier, Mumbai 400 001.
5. **Additional Director General of Police,**
   Protection of Civil Rights Floor,
   Old Custom House, Mumbai 400 001. **…Respondents**

APPEARANCES

For the Petitioner	**Ms Sonali Pawar**, with Mr Sandeep Dere.

For Respondents-State **Mr NC Walimbe, Addl. GP**, with
Mr RM Shinde, AGP.

CORAM **SUMAN SHYAM &**
S. M. MODAK, JJ

RESERVED ON **10TH NOVEMBER 2025.**
PRONOUNCED ON **24TH DECEMBER 2025.**

JUDGMENT (*Per Suman Shyam, J*):-

1. This Writ Petition is directed against the Judgment and Order dated 14th March 2024 passed by the learned Maharashtra Administrative Tribunal (**"MAT"**) in Original Application No. 1278 of 2022, rejecting the prayer made by the original Applicant/Writ Petitioner for setting aside the order dated 31st December 2021 for recovery of an amount of Rs. 3,05,690/- from his retirement dues as excess payment. The facts of the case, in a nutshell, are as hereunder:-

2. The Writ Petitioner was originally appointed as a Sub-Inspector of Police on 2nd July 1989. After rendering service for nearly 32 years, he had retired as Superintendent of Police on attaining the age of superannuation with effect from 31st May 2021. After the retirement of the Petitioner, while his pension papers were under process, there was an audit objection raised by the Pay Verification Unit ("**PVU**") when his Service Book was sent for verification. On 31st December 2021, the Respondent No 5, i.e., The Additional Director General of Police had issued order dated 31st December 2021 and Corrigendum dated 14th September 2022 re-fixing the pay of the Applicant with effect from 8th February 2001, thus contending that an amount of Rs. 3,05,690/- was recoverable from the Petitioner on account of excess payment. Upon his retirement, a sum of Rs. 4,20,000/- was due and payable to the Petitioner by the Department on account of Death-Cum-Retirement Gratuity (**"DCRG"**). As such initially the Petitioner had stated that the amount be recovered from his DCRG. However, on the same day he wrote to the Respondents informing them that the amount should not be recovered in view of the Judgment and decision of the Hon'ble Supreme Court rendered in the case of ***State of Punjab & Ors vs Rafiq Masih (White Washer).***[1]

3. The Account Officer had taken a stand before the learned MAT that the Applicant had given an undertaking, as per Rule 6(2)(3), as laid down in Notification dated 30th January 2019 issued by

1 2015 (4) SCC 334 : AIR 2015 S 696 : 2015 AIR SCW 501.

the Finance Department agreeing for recovery of over payment, which can be adjusted from the amounts found due to him. Therefore, the Writ Petitioner/Original Applicant cannot now raise objection to such recovery process.

4. After taking note of the projections made by the learned counsel for both sides and on consideration of Rule 134-A of the Maharashtra Civil Services (Pension) Rules 1982, which permits recovery and adjustment of excess amount paid to a Government Servant even after his retirement by the impugned Judgment and Order dated 14th March 2024, learned Tribunal had rejected the Original Application, *inter alia,* holding that since the Petitioner has retired as Superintendent of Police, he did not belong to Class-III or IV or Group–C or D category. Therefore, the law laid down in the case of ***Rafiq Masih*** (Supra) would not be applicable in this case. The operative part of the Judgment and Order dated 14th March 2024 is reproduced hereinbelow for ready reference:-

> "8. Further more it is to be noted that this in this case the rules of natural justice are followed and show cause notice was issued to the applicant. Reliance of Ld Advocate for the applicant on ***Rafiq Masih*** (Supra) is not applicable to the present applicant because he retired as Deputy Suuperintendent of Police whereas the judgment in ***Rafiq Masih*** (Supra) is only applicable to the case of employees belonging to Class III and IV or Group C and

> D. It is also to be further noted that the applicant has given undertaking stating that any excess payment if made would be refunded. Considering all these facts, I do not find any illegality in the impugned show cause notice dated 20.9.2022 and the order dated 31.12.2021. Hence no interference is required and there is no merit in this case.
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> 9. In view of the discussion in the foregoing paragraphs, OA stands dismissed with no order as to costs."

5. The case of the Petitioner is that, pursuant to his promotion to the post of Assistant Police Inspector on 29th August 2001, his pay was fixed at Rs. 7,500/- giving effect to the same from 8th September 2001. On the basis of such pay fixation, the Petitioner from service had drawn his salary throughout his career and, eventually, retired on 31st May 2021. Since the order dated 31st December 2021 was issued after the retirement of the Petitioner and the aid decision was communicated to him by the Respondent No. 2 vide order dated 10th February 2022, in view of the decision in the case of ***Rafiq Masih*** (Supra), according to which, such recovery was impermissible from a retired employee.

6. It is also the case of the Petitioner that on the pretext of making recovery of Rs.3,05,690/-, the authorities have withheld the entire amount of Rs. 4,20,000/- as retirement dues payable to the Petitioner, thus acting in an illegal and arbitrary manner.

7. The Petitioner's counsel has relied upon the decision of the Hon'ble Supreme Court in the case of ***Rafiq Masih*** (Supra) as well the decision rendered by a Division Bench of this Court in the case of ***Vinay s/o Jagannath Mhatre vs Administrative /Establishment Officer & Ors***[2] to submit that the recovery of such amount made by the Respondents is impermissible in the eyes of law. Therefore, the impugned Judgment and Order dated 14th March 2024 as well as the Order dated 31st December 2021 along with Show Cause Notice dated 20th September 2022 issued by the Respondent No. 2, be quashed and set aside.

8. Resisting the above arguments, the learned Additional Government Pleader, by relying upon the decision of the Hon'ble Supreme Court in the case of ***High Court of Punjab & Haryana & Ors vs Jagdev Singh***[3] has argued that since the Petitioner had issued an undertaking permitting the department to make recovery of excess payment, he would now be estopped from raising any objection on such count. As such, submits Mr Walimbe, learned Additional GP, the Writ Petition is devoid of any merit and the same deserves to be dismissed.

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2 Writ Petition No. 12153 of 2022 decided on 11th September 2025.

3 (2016) 14 SCC 267.

9. We have considered the rival submissions advanced on behalf of both sides and perused the materials placed on record. The Petitioner retired from service with effect from 31st May 2021. There is no dispute about the fact that the order dated 31st December 2021 was issued by the Respondent No. 4, after the retirement of the Petitioner. He was informed about such decision by letter dated 10th February 2022 issued by the Respondent No 2, which was also after his retirement.

10. The Petitioner had submitted his Reply on 15th February 2022 denying the claim of excess payment. Notwithstanding the same, on 20th September 2022, the Respondent No. 2 had issued Show Cause Notice for recovery of the amount prompting the Petitioner to approach the learned Tribunal by filing the aforesaid Original Application. From the materials available on record, the undisputed fact that emerges is that the plea of excess payment made by the department pertains to the period of salary drawn by the Petitioner from 8th February 2001 to 31st May 2021, amounting to Rs. 3,05,690./- The department is now seeking to recover the aforesaid amount from the retirement dues of the Petitioner by issuing the Show Cause Notice 20th September 2022. The learned

MAT has rejected the Original Application primarily on the ground that the process initiated by the department was in consonance with Rule 134-A of the Maharashtra Civil Services (Pension) Rules 1982 and, therefore, in due compliance of principles of natural justice as well. It was also held that the decision in the case ***Rafiq Masih*** (Supra) was not applicable to the Petitioner since he retired in Group A services

11. In case of ***Rafiq Masih*** (Supra), the Supreme Court, while dealing with the question of recovery of excess drawl by the employer, had laid down the following guidelines in paragraph 12, which reads as follows:

> "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."

12. As per the law laid down in the case of ***Rafiq Masih*** (Supra), the employees who come within any of the criteria laid down in paragraph 12 cannot be subjected to recovery of excess payment. Amongst the abovenoted criteria laid down by the Hon'ble Supreme Court, Clause-II refers to the retired employees which is regardless of the group or class of service to which they had retired from. Therefore, the Petitioner being a retired employee, the decision in ***Rafiq Masih*** (Supra) would undoubtedly be applicable in case of the Writ Petitioner. To that extent, we are of the considered view that the learned Tribunal was not correct in holding that the law laid down in the case of ***Rafiq Masih*** (Supra) would not be applicable to the Petitioner.

13. Following the decision of the Hon'ble Supreme Court in ***Rafiq Masih*** (Supra), the Government of India, Ministry of

Personnel, Public Grievances & Pensions Department of Personnel & Training had issued an Office Memorandum dated 2nd March 2016 laying down that recovery from the employees would be impermissible in case of those categories of employees referred to in paragraph 12 of ***Rafiq Masih*** (Supra). The aforesaid OM was circulated among all concerned authorities, including all the Government of States and Union Territories. Therefore, it is evident that there is a conscious decision on the part of Governments to implement the law laid down by the Hon'ble Supreme Court in the case of ***Rafiq Masih*** (Supra) in case of all such employees who come within the ambit of the said decision. If that be so, since the Writ Petitioner comes within the group of category laid down in paragraph 12 of the said Judgment, regardless of Rule 134-A of the Maharashtra Civil Services (Pension) Rules 1982, he could not have been subjected to recovery of over payment after his retirement.

14. In the case of ***Jogeswar Sahoo & Ors vs The District Judge, Cuttack & Ors,***[4] the Supreme Court of India, after considering the law laid down in several earlier decisions rendered in cases of

4 2025 SCC OnLine SC 724.

Sahib Ram vs State of Haryana,[5] ***Shyam Babu Verma vs Union of India,***[6] ***Union of India vs M Bhaskar,***[7] ***V Gangaram vs Regioal Jt. Director***[8] ***& Thomas Daniel vs State of Kerala & Ors***[9] as well as ***Rafiq Masih*** (Supra), has held that financial benefits extended to the employees during the course of their service would not be liable to recovery after his retirement. The decision in the case of ***Jogeswar Sahoo & Ors*** (Supra) was rendered after taking note of the law laid down in the case of ***Syed Abdul Qadir vs State of Bihar***[10] wherein, it was held that the employee cannot be held responsible for over payment and, therefore, recovery of excess payment should not be ordered, especially in case of retired employees, where there exists no misrepresentation or fraud or the part of the employee and that the excess payment has been made merely by wrong interpretation /understanding of a Rule or Order.

15. In the present case also undoubtedly, the excess payment, if any, was made due to an error committed by the department while fixing the pay of the Petitioner in the revised pay scale way back on

5 (1995) Supp (1) SCC 18.
6 (1994) 2 SCC 521.
7 (1996) 4 SCC 416.
8 (1997) 6 SCC 139.
9 (2022) SCC OnLine SC 536.
10 2009 (3) SCC 475.

8th February 2021. It is not the case of department that there was any fraud or misrepresentation on the part of the Petitioner leading to excess drawl.

16. It is correct that in the case of ***Jagdev Singh*** (Supra) relied upon by the learned Additional Government Pleader, the Supreme Court has held that if the officer had furnished an undertaking while opting for the revised pay scale, that excess payment, if any, would be liable to be refunded/recovered then, the principles laid down in paragraph 12 of the ***Rafiq Masih*** (Supra) would not be applicable. However, the fact remains that the undertaking of the Petitioner referred to by the Respondents was not obtained at the time of revision of his pay scale but the same was obtained after his retirement as a routine exercise, so as to finalise his pension. An undertaking of this nature, obtained after the retirement of the employee, in our view, cannot relate back to excess payment made nearly two decades back while re-fixing the pay of the officer in the revised pay scale. It was evidently, a general undertaking given by the officer after his retirement for settlement of pension. Therefore, the same cannot be used by the department for making recovery of payment from the retirement dues. Therefore, the decision rendered in ***Jagdev Singh*** (Supra), in our considered opinion would not have any bearing in the facts of the present case. Rather, the law laid down in ***Rafiq Masih*** (Supra) would act as a binding precedent to be followed by this Court in the present matter.

17. For the reasons stated hereinabove, the Writ Petition must succeed and the same is hereby allowed. The impugned Judgment and Order dated 14th March 2024 is, hereby, quashed and set aside. Consequently, the order dated 31st December 2021 as well as the Show Cause Notice dated 20th September 2022 also stands quashed.

18. The Respondents are directed to pay the balance retirement dues to the Petitioner, if any, within a period of three months from the date of receipt of the copy of this order, failing which, the amount due and payable shall carry interest at the rate of 9% per annum from the date of retirement of the Petitioner till realisation of same. No order as to cost.

(S. M. MODAK, J.) **(SUMAN SHYAM, J.)**