

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7995 OF 2024

Vishnu Laxman Jadhav

...Petitioner

VERSUS

Hon'ble District Judge Nashik And Ors.

...Respondents

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Mr. Ketan Arun Dhavle, Advocate for the Petitioner.

Mr. Girish Agrawal a/w Mr. Shubham Jangam, Advocate for Respondent Nos.1 & 2.

Ms. Ashwini A. Puray, AGP for Respondent No.3 & 4-State.

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**CORAM : M. S. KARNIK &
N. R. BORKAR, JJ.**

DATE : 07th JULY, 2025

P.C.:

1. The petitioner was working as a Bailiff. He was appointed on 13.09.1981. The petitioner retired on 31.05.2023. The petitioner's pay was fixed on 01.07.2011. The petitioner was continued to be paid on the basis of such pay fixation as on 31.10.2022. It was then the respondents realised that there was an error in fixing the pay of the petitioner. By an order dated 21.10.2022, the Civil Judge Senior Division issued directions to recover excess amount

from the petitioner. By letter dated 08.11.2022, the petitioner was directed to deposit the excess amount of Rs.1,37,326/- which he deposited. He has challenged the recovery in this petition.

2. It is the contention of the learned counsel for the respondents that the petitioner never challenged the said order dated 21.10.2022 passed by the Civil Judge Senior Judge directing to deposit the excess amount. In fact, in compliance of the directions of the Civil Judge Senior Division, the petitioner deposited the excess amount of Rs. 1,37,326/- on 17.11.2022. It is then submitted that the petitioner had filed an undertaking that he would refund an excess amount paid to him. Our attention is further invited to the G. R. dated 22.11.2021 of the State-Government requiring furnishing of undertaking by the employees concerned.

3. In our opinion, the respondent was not justified in recovering the amount of Rs.1,37,326/- from the petitioner. The petitioner was not responsible for the error in the pay fixation. There was no misrepresentation on his part. The petitioner was working as a Bailiff, a Class-4 employee. The

recovery was made for the period beginning from 2011 to 2022 on account of error in pay fixation and hence, the G.R. Dated 22.11.2021 is not applicable to the petitioner's case. The undertaking which the respondents say was given by the petitioner after the pay fixation was effected. There is nothing on record to indicate that the undertaking was specific to such pay fixation but it appears that the undertaking is a general undertaking.

4. Learned A.G.P. submitted that having refunded the excess amount, it is not open now for the petitioner to claim refund after such delay of almost two years. We are not impressed with the submissions of learned A.G.P. It may be that the petitioner has refunded the excess amount. However, the present case is squarely covered by the decision in ***Rafiq Masih (White Washer) and Ors***¹ The petitioner is a retired Bailiff, a class-4 employee. In the first instance this is not the case where the respondent should have proceeded to recover the excess amount which was paid to the petitioner on the basis of an erroneous pay fixation, when there is no fault on

¹ (2015) 4 SCC 334

the part of the petitioner. Having done that, it is only in the interest of justice that the same shall be refunded to the petitioner.

5. In this view of the matter, we are inclined to allow the petition.

6. The respondents are directed to refund the amount of Rs.1,37,326/- to the petitioner within a period of three months from today.

7. Petition is disposed of. No cost.

(N. R. BORKAR, J.)

(M. S. KARNIK, J.)