

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

WRIT PETITION NO. 15060 OF 2024

Balu Rama Dhat ...Petitioner
VERSUS
Honorable 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 : 7th JULY, 2025

P.C.:

1. The petitioner was working as a Havildar. He was appointed on 20.07.1984. The petitioner retired on 30.06.2023. The petitioner's pay was fixed on 17.10.2020. The petitioner was continued to be paid on the basis of such pay fixation as on 01.01.2016. It was then the respondents realised that there was an error in fixing the pay of the petitioner. By an order dated 17.10.2020, the District and Sessions Judge, Nashik issued directions to recover excess amount from the petitioner. By letter dated 08.03.2023, the

petitioner was directed to deposit the excess amount of Rs.2,58,919/-. This petition is then filed in the year-2024 challenging the recovery of amount of Rs.2,58,919/-.

2. Learned A.G.P for the Respondents-State submitted that the petitioner had deposited the amount in question on 28.02.2023 without any protest. It is further submitted that the order dated 17.10.2020 of the District and Sessions Judge, Nashik has not been challenged. It is then submitted that the petitioner had filed an undertaking that he would refund the excess amount paid to him. Our attention is invited to the G. R. dated 22.11.2021 of the State-Government requiring the furnishing of undertaking by the employees concerned.

3. In our opinion, the respondents were not justified in recovering the amount of Rs.2,58,919/- 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 Havildar as a Class-IV employee. The recovery was made for the period beginning from 2016 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 was after the pay fixation was effected. There is nothing to place on record to indicate that the undertaking was specific to such pay fixation but it appears that the undertaking is general undertaking in nature. Such undertaking cannot bind the petitioner.

4. Learned A.G.P. submitted that having refunded the excess amount, it is now not open for the petitioner to claim refund after such a 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 Ors¹***. The petitioner is a retired Havildar, a class-IV employee. In the first instance this is not the case where the respondents 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 the part of the petitioner and having done that, it is in all fairness the amount should be refunded.

1 (2015) 4 SCC 334

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.2,58,919/- to the petitioner within a period of three months from today.

7. The Petition is disposed of.

(N. R. BORKAR, J.)

(M. S. KARNIK, J.)