

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

WRIT PETITION NO. 15066 OF 2024

Mahendra Muralidhar Shertate

...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.

Mr. S. L. Babar AGP for Respondent -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 30.09.1981. The petitioner retired on 30.09.2023. 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.2,65,122/-. This petition is then filed in the year-2024 challenging the recovery of amount of Rs.2,65,122/-.

2. Learned A.G.P for the Respondents-State submitted that the petitioner had deposited the amount in question on 04.03.2023 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 any excess amount paid to him. Our attention is invited to the G. R. dated 22.11.2021 of the State-Government requiring furnishing of undertaking by the employees concerned.

3. Heard. In our opinion, the respondents were not justified in recovering the amount of Rs.2,65,122/- from the petitioner. The petitioner was not responsible for the error in the pay fixation. There was no misrepresentation on his part. The petitioner is 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 approach of the respondents in effecting recovery on the basis of the G.R. dated 22.11.2021 is erroneous. Even if the undertaking which the respondents say was given by the petitioner 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 a general undertaking. Such undertaking will not 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 delay of almost one year. 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 clearly covered by the decision in the ***Rafiq Masih (White Washer) and Ors***¹. The petitioner is a retired Havildar a class-IV employee. In the first instance this is not a 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

¹ (2015) 4 SCC 334

on the part of the petitioner. The petitioner is therefore entitled to the refund of the amount, the recovery of which is prejudicial 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.2,65,122/- 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.)