

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

WRIT PETITION NO. 17714 OF 2024

Shobha Gawande

...Petitioner

VERSUS

Honourable 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. A. A. Alaspurkar, AGP for Respondent No.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 Senior Clerk. She was appointed on 01.01.1997. The petitioner retired on 31.01.2019. The petitioner's pay was fixed on 01.01.2011. The petitioner was continued to be paid on the basis of such pay fixation as on 23.02.2018. It was then the respondents realised that there was an error in fixing the pay of the petitioner. By an order dated 18.09.2019, the District Judge-1 and Additional Sessions Judge, Niphad, Nashik issued directions to recover excess amount from the petitioner. By letter dated 11.11.2019, the petitioner was directed to deposit the excess amount of Rs.1,18,820/-. An amount of

Rs.1,18,820/- was directly deducted from gratuity and Rs.31,041/- was deducted towards difference of 7th pay i.e. total sum of Rs. 1,49,861/- was recovered.

2. It is the contention of learned counsel for the respondents that the petitioner never challenged the order dated 18.09.2019 passed by the Additional District and Judge, Niphad, Nashik directing deposit of the excess amount. In compliance of the directions of the the Additional District and Judge, Niphad, Nashik, the excess amount of Rs.1,49,861/- was recovered from the petitioner on 07.02.2020. This petition is then filed in the year-2024 challenging the recovery of amount of Rs.1,49,861/-.

3. Learned A.G.P. for the Respondent-State submitted that the respondents had recovered the amount in question on 07.02.2020 without any protest. It is further submitted that the order dated 18.09.2019 of the Additional Sessions Judge and District Judge-1, Niphad, Nashik has not been challenged. It is then submitted that the petitioner had filed an undertaking that she would refund an excess amount paid to her. Our attention is further invited to the G. R. dated 22.11.2021 of the State-Government for furnishing of undertaking by the employees concerned.

4. In our opinion, the respondents were not justified in recovering the amount of Rs.1,49,861/- from the petitioner. The petitioner was not responsible for the error in the pay fixation. There was no misrepresentation on her part. The

petitioner was working as a Senior Clerk, a Class-III employee. The recovery was made for the period beginning from 2011 to 2018 on account of error in pay fixation and hence, the G.R. Dated 22.11.2021 is not applicable to the petitioner's case. Even if the undertaking which the respondents say was given by the petitioner, which was 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.

5. 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 four years. The recovery is from the gratuity amount. The same is prejudicial to the petitioner. 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 Senior Clerk, a class-III 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. Having recovered the amount causing prejudice to the petitioner, the same should be refunded.

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

¹ (2015) 4 SCC 334

7. The respondents are directed to refund the amount of Rs.1,49,861/- to the petitioner within a period of three months from today.

8. Petition is disposed of.

(N. R. BORKAR, J.)

(M. S. KARNIK, J.)