

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

WRIT PETITION NO. 8744 OF 2025

The Chief Administrative Officer
Maharashtra Jeevan Pradhikaran

...Petitioner

Versus

Satish Gajanan Pradhan

...Respondent

Mr. Ajit Pitale, a/w Siddharth Pitale, for the Petitioner.

Ms. Sakshi Inamdar, a/w Satish Pawar, for the Respondent.

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CORAM: N. J. JAMADAR, J.

RESERVED ON: 4th AUGUST, 2025.

PRONOUNCED ON: 3rd NOVEMBER, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. The challenge in this petition is to an award dated 17th October, 2024 passed by the Permanent Lok-Adalat, Pune, under Section 22-E of the Legal Services Authorities Act, 1987 ("the Act, 1987"), thereby directing the recovery of the amount of Rs.3,00,196/- alongwith simple interest at the rate of 8% p.a. from the date of retirement till the date of realization of the amount, restoration of the pay scale of the respondent as it obtained as of the date of the retirement and grant of monetary benefits on the basis of the said pay scale and a compensation

of Rs.10,00,000/- towards mental and physical harassment of the respondent.

3. The background facts necessary for the determination of this petition can be stated as under:

3.1 The petitioner is the Chief Administrative Officer of Maharashtra Jeevan Pradhikaran, ("Pradhikaran") a statutory body constituted under the Maharashtra Jeevan Authority Act, 1976. The Pradhikaran is an instrumentality of the State. It has Zonal Offices, including one at Pune.

3.2 The respondent retired from the office of the Pradhikaran at Pune. He was appointed as a Typist in the office of the Pradhikaran on 2nd May, 1973. Vide Government Resolution dated 17th April, 1978, pay scale of the Typist was upgraded to Rs.290-540/-. Vide Government Resolution dated 1st July, 1978 options were invited from the persons, who were working as Typist to exercise the option to claim higher pay-scale at Rs.290-540/- with effect from 1st April, 1976, if they forego the right to be considered for promotion to the promotional posts in the clerical cadre.

3.3 On 24th July, 1986 another Government Resolution was issued calling options from the Typist, who were governed by the

Government Resolution dated 1st July, 1978. On 1st January, 1986, the respondent had exercised the option to continue to avail the upgraded pay-scale of the Typist. Yet, it appears, benefit of time-bound promotion in the pay-scale of clerical cadre was extended to the respondent on 1st October, 1994.

3.4 In the year 1999, the respondent was offered regular promotion as a Senior Clerk with effect from 17th February, 1999. At that stage, the respondent refused to avail the promotion and insisted that having exercised the option to be governed by the upgraded pay-scale of Typist, his pay-scale be fixed in that scale.

3.5 Eventually, it appears, in the year 2005, an office order was issued by an officer of the Pradhikaran thereby correcting the mistake and giving the pay-scale admissible to a Typist and the pay-scale of the respondent was fixed as a Typist. The respondent retired from service on 30th September, 2008.

3.6 After about two years of the retirement, pursuant to an objection raised by the Audit Department, the employer decided to withdraw time-bound promotional pay-scale given to the petitioner in the cadre of the Typist and recover the excess payment purportedly made to the respondent. Accordingly, the

employer recovered a sum of Rs.3,00,196/- from the gratuity and pension, which were payable to the respondent.

3.7 Assailing the legality and correctness of the said actions and consequent recovery, the applicant filed an application under Section 22C(1) of the Act, 1987 before the Permanent Lok-Adalat Pune. It would be contextually relevant to note by a judgment and order dated 10th August, 2022, WP/848/2020, filed by the employer assailing the order dated 29th June, 2019 passed by the Permanent Lok-Adalat, thereby rejecting the challenge by the employer to the jurisdiction of the Permanent Lok-Adalat, came to be dismissed.

3.8 After appraisal of the pleadings and the material on record, by the impugned order the Permanent Lok-Adalat was persuaded to allow the application preferred by the respondent holding *inter alia* that there was no excess payment, as alleged by the employer, and, in any event, the excess payment was not made on account of any misrepresentation or fraud on the part of the respondent. On the contrary, the respondent had consistently claimed fixation of pay in the upgraded pay-scale of the Typist only. The Permanent Lok-Adalat thus passed the award thereby directing recovery of the sum of Rs.3,00,196/- which was illegally deducted from the gratuity and pension of

the respondent, fixation of pay-scale in the scale which the respondent was drawing on the date of his retirement and the grant of monetary benefits on that basis. The Permanent Lok-Adalat was also of the view that after retirement a pensioner was put to mental pain and agony and, therefore, ordered payment of compensation of Rs.10,00,000/- on the said count.

4. Being aggrieved, the petitioner has invoked the writ jurisdiction.

5. I have heard Mr. Ajit Pitale, the learned Counsel for the petitioner, and Ms. Sakshi Inamdar, the learned Counsel for the respondent, at some length. The learned Counsel took the Court through the pleadings before the Permanent Lok-Adalat.

6. Mr. Pitale, the learned Counsel for the petitioner, would urge that the Permanent Lok-Adalat misdirected itself in allowing the application. There was no material to show that the respondent had exercised the option within the stipulated period of the first Government Resolution dated 17th April, 1978 and the second GR dated 24th July, 1986. The respondent had, in fact, exercised the option of 1st January, 1986. The authorities were, therefore, justified in not considering the said option exercised by the respondent.

7. Secondly, Mr. Pitale would urge the Permanent Lok-Adalat had not at all framed the point of grant of compensation for mental pain and agony. Yet, a huge sum of Rs.10,00,000/- was awarded under the said head without evaluating the legality of such compensation and justifiability of the quantum thereof. Therefore, according to Mr. Pitale, the impugned order deserves to be quashed and set aside.

8. Ms. Inamdar, the learned Counsel for the respondent, stoutly resisted the submissions on behalf of the petitioner. It was submitted that, in the facts of the case, the employer has acted in an unjust and oppressive manner. The error which the employer had committed was in fact corrected in the year 2005 and, yet, after retirement of the respondent a wholly unjust and iniquitous order of recovery of the sum of Rs.3,00,196/- was passed and the recovery was also effected in a high-handed manner. In these circumstances, the respondent, a senior citizen, was entitled for compensation for the mental pain and agony and harassment on account of *ex facie* illegal action on the part of the employer.

9. The controversy is required to be appreciated in two parts. First, the legality, propriety and correctness of the impugned award qua the recovery of the amount from the gratuity and

pension of the respondent, after about two years of the retirement. Second, the justifiability of the award of compensation of Rs.10,00,000/- towards mental and physical harassment.

10. On the first count, the facts appear to be quite clear. The respondent was appointed as a Typist. The respondent exercised the option to avail the upgraded pay-scale of the Typist pursuant to the Government Resolution dated 17th April, 1978. The respondent, again exercised the option on 1st January, 1986. Yet, in the year 1994 a time-bound promotion in the clerical cadre was extended to the respondent. However, in the year 1999, when regular promotion in the clerical cadre was offered to the respondent, the latter refused and insisted for the fixation of pay-scale in the upgraded scale of the Typist.

11. As is evident, in the year 2005, the employer had corrected the anomaly and the respondent was granted pay-scale in the upgraded pay-scale of the Typist. Till the respondent superannuated, it seems, no objection was raised and, after about two years of the retirement of the respondent, the notice to recover the alleged excess payment was issued.

12. The legal position in regard to the recovery of the amounts paid to the employee without their being any fraud or

misrepresentation on the part of the employee is fairly well settled. The Courts have interdicted the recovery where the excess payment was made by the employer by applying a wrong principle for calculating the pay/allowances or an incorrect impression of rule or an order which was subsequently found to be erroneous. The foundational premise of such restraint against recovery is not that any right inheres in the employee but an equitable exercise of judicial discretion to relieve the employee from the hardship and the inconvenience that would ensue if the recovery is ordered at a belated stage or after many years of the grant of benefit or retirement of the employee concerned. Recovery of a huge amount at such stage is fraught with grave consequences to an employee, who cannot be attributed with any fault in releasing the alleged excess payment.

13. In the case of *Col. B. J. Akkara (Retd.) vs. Government of India and others*¹, the Supreme Court, after adverting to the previous precedents, held that the Supreme Court has consistently granted relief against recovery of the excess wrong payment of emoluments/ allowances from an employee if certain conditions are fulfilled. The observations of the Supreme Court

¹ (2006) 11 Supreme Court Cases 709.

in paragraphs 27, 28 and 29 are material and hence extracted below:

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7.6.1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled [Vide *Sahib Ram vs. State of Haryana* [1995 Suppl.1 SCC 18], *Shyam Babu Verma vs. Union of India* [1994 (2) SCC 521], *Union of India vs. M. Bhaskar* [1996 (4) SCC 416], and *V. Gangaram vs. Regional Joint Director* [AIR 1997 SC 2776] :

- a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.
- b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by

the implementing departments. We are therefore of the view that Respondents shall not recover any excess payments made towards pension in pursuance of circular dated 7.6.1999 till the issue of the clarificatory circular dated 11.9.2001. In so far as any excess payment made after the circular dated 11.9.2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.”

(emphasis supplied)

14. In the case of *State of Punjab and others vs. Rafiq Mashfi (White Washer) and others*², the Supreme Court has summarized certain propositions which ought to govern the exercise of discretion in such matters. The observations in paragraph 18 are instructive and hence extracted below:

“18. 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.”

2 (2015) 4 Supreme Court Cases 334.

15. In the case of *Thomas Daniel vs. State of Kerala and ors.*³, the Supreme Court, *inter alia*, enunciated that an attempt to recover the increments after passage of ten years of the retirement of the employee was unjustified.

16. If the facts of case at hand are appraised on the touchstone of the aforesaid principles, it seems, a number of factors stand fulfilled. The respondent was undoubtedly a Class-III employee. Secondly, the recovery was initiated and effected after the respondent retired from service. The excess payment was made for the period in excess of five years. Conversely, it does not seem that there is any element to justify an inference that the excess payment was made on account of any misrepresentation or fraud on the part of the respondent. On the contrary, the material on record unmistakably indicates that the respondent has been forthright since inception in his claim that he be given the upgraded pay-scale of the Typist and has, in fact, agreed to forego the promotion in the clerical cadre. Lastly, the employer itself had corrected the error by passing an order to fix the pay of the respondent in the pay-scale of Typist.

17. In the aforesaid backdrop, the Court finds that the recovery of the alleged excess payment from the gratuity and

3 2022 LiveLaw (SC) 438.

pension of the respondent was not at all justified. It appeared to be an exercise driven by the objections in the Audit Report. In the facts of the case, such recovery from the gratuity and pension was onerous and caused undue hardship to the respondent, a pensioner.

18. On the second count of the award of exemplary compensation of Rs.10,00,000/- on the ground of mental and physical harassment, few principles which govern the award of damages are required to be considered. “Compensation” is a term of wide import. Etymologically it means, “compensating or being compensated; things given as re-compense.” In legal parlance, it may signify the actual loss or expected loss or damage and may also include in its fold compensation for physical, mental or even emotional suffering or trauma. A distinction is, however, required to be drawn between pure commercial contracts and the cases wherein compensation for mental pain and agony is claimed on account of the actions of the authorities of the State.

19. In the case of *Ghaziabad Development Authority vs. Union of India and another*⁴, the Supreme Court, in the context of failure to perform the contract for sale of land, observed that

⁴ (2000) 6 Supreme Court Cases 113.

compensation for mental agony could not have been awarded as has been done by the MRTP Commission.

20. At the same time, it is necessary to note where the administrative action is taken in an arbitrary and high-handed manner, the aggrieved person cannot be left in the lurch. In such a situation, in addition to the compensation for the actual loss computable in monetary terms, a person is also entitled to receive compensation for the mental pain and agony on account of oppressive and capricious exercise of the power by the authorities.

21. In the case of *Lucknow Development Authority vs. M. K. Gupta*⁵, the Supreme Court held that when a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Consumer Commission finds it duly proved, then it has a statutory obligation to award the same. The Court further directed that the responsibility for the wrong done to the citizens be fixed on the officers, who were responsible for causing harassment and agony to the claimant and then the amount of compensation be recovered from salary of the erring officers.

5 (1994) 1 Supreme Court Cases 243.

22. To the extent the Permanent Lok-Adalat found that the respondent suffered pain and agony on account of the recovery of a substantial amount of Rs.3,00,196/- from the gratuity and pension payable to the respondent, no fault can be found with the view of the PLA. It can hardly be disputed that such recovery after retirement has the potential the cause not only grave hardship but even acute mental pain and agony. In the peculiar facts of the case, what exacerbates the situation is the fact that in the year 2005, the employer had corrected the mistake and placed the respondent in the pay-scale admissible to a Typist. The respondent was thus made to believe that the claim of excess payment would not be pursued further. Recovery of the amount, in such background, caused grave anxiety and suffering to the retired employee.

23. The award of damages under the head of mental pain and agony cannot be, thus, said to be wholly unjustified. However, it is the quantum of compensation that warrants consideration.

24. The Court cannot lose sight of the fact that the recovery was only of a sum of Rs.3,00,196/-. While directing the recovery and refund of the said amount to the respondent, the Court also directed payment of interest at the rate of 8% p.a. Interest is essentially a recompense for being kept away from the money

which would have been otherwise available. Thus, the payment of compensation of Rs.10,00,000/- for the action of unjustified recovery of an amount of Rs.3,00,196/- appears to err on the side of severity. Compensation for mental pain and agony cannot be arbitrary and completely disconnected from the attendant circumstances. It can neither be too high nor too low.

25. In the facts of the case at hand, in my considered view, the quantum of compensation directed to be paid towards mental pain and agony is required to be modified. A sum of Rs.1,00,000/- would be a just, fair and reasonable compensation under the head of mental pain and agony. The petition is, therefore, required to be allowed to the extent of the quantum of the compensation ordered to be paid by the employer – petitioner.

26. Hence, the following order:

: O R D E R :

- (i) The petition stands partly allowed.
- (ii) The impugned order stands modified to the extent of the quantum of compensation awarded under the head of mental pain, agony and physical harassment.

- (iii) The employer shall pay Rs.1,00,000/- towards the compensation for the mental pain, agony and physical harassment to the respondent.
- (iv) Rest of the order stands affirmed.
- (v) Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]