

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6988 OF 2025

Balaso Bapu Desai

... Petitioner

Versus

The State Of Maharashtra Throrugh The Secretary
Village Development

... Respondent

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Mr. Prashant Bhavake for the Petitioner.

Ms. T.J. Kapre, AGP for the Respondent – State.

Mr. Kedar Lad a/w Mr. Indrayani Patil for respondent Nos. 2 and 3.

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CORAM : MADHAV J. JAMDAR &
PRAVIN S. PATIL, JJ.

DATE : 27th MARCH, 2026.

ORAL JUDGMENT : (Per Pravin S. Patil, J.)

1. Heard Mr. Bhavake, learned counsel for the petitioner and learned AGP for the respondent - State.

2. At the outset, learned counsel for respondent Nos.2 and 3 tendered written submissions on record. The same are accepted.

3. The petitioner approached before this Court challenging the order

dated 18th June 2024 passed by respondent No.2 – Chief Executive Officer, Zilla Parishad, Kolhapur thereby declaring the termination period of the petitioner from 12th June 1997 to 20th September 2004 as ‘break in service’ and also challenging the order dated 24th February 2025, passed by respondent No.3 – Deputy Chief Executive Officer, Zilla Parishad, Kolhapur by which they have revised the pay-scale of the petitioner in pursuance of order dated 18th June 2024 and passed the order of recovery of excess amount of Rs. 6,90,441/- from pensionary and other retirement benefits.

4. It will be relevant in the present matter to state certain facts of the case. The present petitioner was initially appointed on 24th October 1985 as a Driver at respondent – Zilla Parishad, Kolhapur. After rendering 12 years of service, he was terminated by respondent No.2 without conducting any inquiry, on 13th June 1997. The petitioner challenged the said termination order before this Court by preferring Writ Petition No. 8663 of 2003. This Court by considering the entire submissions of both the parties vide order dated 9th September 2004, passed the following order :-

“(i) The impugned order dated 18th June 1997 (Exhibit “G”) is quashed and set aside. Consequently the petitioner shall be entitled to reinstatement but without back wages.

(ii) The respondent No.3 shall be at liberty, however, to initiate fresh enquiry against the petitioner if the appointment was obtained by the petitioner fraudulently or illegally under the employment of freedom fighter scheme in the government service as per the Government circular dated 12th October, 1965.”

5. In pursuance of the order of this Court, the respondent – Zilla Parishad, Kolhapur has reinstated the petitioner in service and granted all consequential benefits, including revision of pay-scale and allowances accordingly. The petitioner also pointed out that from the date of reinstatement up to the age of superannuation, he has been treated as a regular employee and all consequential benefits of service, including benefits of Assured Career Progression (ACP) Scheme has been also awarded to the petitioner. As such, the petitioner received all the benefits of service as a regular employee. Accordingly, the petitioner, having attained the age of superannuation, on 31st January 2023 get superannuated.

6. After the superannuation of the petitioner, his pension proposal was not processed by the respondent – Zilla Parishad and, therefore, the petitioner was constrained to approach before this Court by filing Writ Petition No. 10573 of 2023. This Court after considering the grievance

raised by the petitioner passed the order on 16th January 2025, which reads thus :-

“1. We are told that the benefit of pension is denied to the Petitioner only on the ground that the enquiry into the aspect as to whether nomination of 'freedom fighter' was validly conferred upon him or not and when we specifically asked the learned counsel for Zilla Parishad about what is the outcome of the said enquiry, he state that the enquiry is still pending.

2. We are surprised that enquiry into a small issue like this has been kept pending for more than two decades and definitely we do not approve of such a conduct on part of the employer.

3. We are informed that the Petitioner has completed 37 years of service and in light of these circumstances, ignoring the pendency of the enquiry, considering whether the service rendered by the Petitioner would make him entitle for conferment of pensionary benefits, we direct Respondent Nos.2 and 3 to forward his proposal for pensionary benefits to the competent authority within a period of four weeks from today.

We would have disposed of the Petition, but since we want to ensure the compliance of the order, we direct listing of the Petitioner on 03/03/2025, under caption, 'for compliance'.”

7. After the order of this Court, the proposal of pension of the petitioner was forwarded to the concerned Authority. The Authority has considered the pension case of the petitioner, however, it is pointed out that as per the order of this Court dated 9th September 2004, as he was not granted the back salary, it amounts to break in the service. On that basis the respondent – Zilla Parishad passed the order dated 18th June

2024 thereby held that the period of service of the petitioner from 12th June 1997 to 20th September 2004 shall be treated as break in service for all purposes. As a result, further order came to be passed on 24th February 2025 and by this order the pay-scale of the petitioner was revised and an amount of Rs. 6,90,441/- was directed to be recovered from the petitioner.

8. In the background of abovesaid factual position, the petitioner again approached before this Court by way of present petition, challenging the orders passed by the respondent – Zilla Parishad.

9. The respondent – Zilla Parishad in response to the notices issued by this Court, appeared and filed their written submissions. According to the respondent – Zilla Parishad, this Court vide its order dated 9th September 2004 has only stated that the petitioner be reinstated but without back wages. According to them, as the petitioner was not held entitled for the back wages, consequently the period from the date of termination till the date of reinstatement, is required to be treated as 'break in service' and, therefore, they have taken this decision.

10. Learned AGP also supported the submission made by the

respondent – Zilla Parishad in the matter and strongly opposed the present petition.

11. In light of the above submissions of both the parties, it is clear that this Court while deciding Writ Petition No.8663 of 2003 by its judgment and order dated 9th September 2004, has decided the case on its own merit and held that termination of petitioner is illegal. This Court has directed the respondent – Zilla Parishad to reinstate the petitioner in service but without back wages. It is nowhere stated that petitioner will not be entitled for continuity of service.

12. In our considered opinion, observations of this Court ‘without back wages’ means that the employee would not be entitled for the salary of the period from the date of termination till the date of reinstatement, but he would be entitled for all benefits of service. The word ‘reinstatement’ means to reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position position. As such, in our opinion as this Court has directed the reinstatement without back wages means, the petitioner is entitled for all consequential benefits of service but without back wages for the said period.

13. In the circumstances, it would be relevant to refer the judgment of the Hon'ble Supreme Court of India in case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya & Ors.**¹ wherein in para 21 the Hon'ble Supreme Court has discussed the meaning of the 'reinstatement'. Paragraph 21 of the said decision reads thus :-

"21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. 2, 3rd Edn., the word "reinstate" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edn., the word "reinstate" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam-Webster Dictionary, the word "reinstate" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edn., "reinstatement" means:

"To reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position from which the object or person had been removed."

14. In the present matter, it would also be relevant to consider the fact that the respondent – Zilla Parishad immediately after the order passed by this Court in the year 2004, has rightly reinstated the petitioner in service and granted him all benefits, including the notional increment

¹ (2013) 10 SCC 324

and benefits of ACP Scheme. As such, till the date of superannuation, the petitioner has been awarded all the benefits. But immediately after his superannuation, the respondent – Zilla Parishad has passed the impugned orders on 18th June 2024 and 24th February 2025.

15. In the background of this factual position, it will be relevant to refer the Judgment of Hon'ble Supreme Court of India in the case of **State of Punjab and Ors. Vs. Rafiq Masih²** and observed in paragraph no.18 as under :-

“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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.

² (2015) 4 SCC 334

(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.”

16. As per the law laid down by the Hon'ble Supreme Court of India in case of ***Rafiq Masih (supra)***, it is held that in a case where an employee who is Class III or Class IV category, then in such cases, the recovery of his salary is not permissible if he is due for retirement within one year, of the order of recovery.

17. In the present case, admittedly after the superannuation of the petitioner, this impugned order came to be passed by the respondent – Zilla Parishad, which according to us is illegal for the simple and valid reason that there is no break in the service of the petitioner. In addition to same, as per the judgment of the ***Rafiq Masih (supra)***, the recovery of amount is not permissible. Hence, on both counts, the impugned orders dated 18th June 2024 and 24th February 2025 do not survive and accordingly same are set aside.

18. For the reasons stated above, the present petition deserves to be allowed. Hence, we pass the following order :-

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned orders dated 18th June 2024 and 24th February 2025 are hereby quashed and set aside. It is made clear that the petitioner's services from 12th June 1997 to 20th September 2004 will be treated as continuous in service. Accordingly, he is entitled for all consequential benefits of continuity of service, including the 2nd and 3rd benefits of ACP Scheme.
- (iii) It is made clear that order dated 24th February 2025 is quashed and set aside only to the extent of recovery of Rs.6,90,441/- from the petitioner and the rest of the order is confirmed.
- (iv) It is needless to clarify that by considering continuity of service, the petitioner will be entitled for revised pension, as per rules.

19. The Writ Petition stands disposed of in the aforesaid directions.

[PRAVIN S. PATIL, J.]

[MADHAV J. JAMDAR, J.]