

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 730 OF 2021**

**DISTRICT:- BEED**

Eteshamuddin Yusufoddin Shaikh  
**(Died)**

**Through LRs**

1. Imranoddin Eteshamoddin Shaikh,  
Age : 38 years, Occu. Business,  
R/o. Plot No. 138, Gut No. 346,  
Sudhakar Nagar, Satara Parisar,  
Aurangabad.
2. Ikramoddin S/o. Eteshamoddin Shaikh,  
Age : 34 Years, Occ: Nil,  
R/o. As above,

**APPLICANTS.**

**V E R S U S**

- 1) The State of Maharashtra,  
Through: The Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
- 2) The Director General of Police,  
Shahid Bhagatsing Marg, Mumbai.
- 3) The Superintendent of Police,  
Beed.
- 4) The Pay Verification Unit,  
Aurangabad.

**.. RESPONDENTS**

---

APPEARANCE : Shri K.B. Jadhav, learned counsel  
for the applicant.  
: Mrs. Deepali S. Deshpande, learned  
Presenting Officer for the respondent  
authorities.

---

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN**

**DATE : 07.08.2023**

---

## **ORAL ORDER**

Heard Shri K.B. Jadhav, learned counsel for the applicant and Mrs. Deepali S. Deshpande, learned Presenting Officer for the respondent authorities.

2. The present Original Application was filed by the retired Government servant namely Eteshamuddin Yusufoddin Shaikh seeking quashment of the order dated 11/12.1.2016 issued by respondent No. 3, whereby the recovery was directed against him alleging that some excess payment was wrongly made to him. Learned counsel for the applicant submitted that during pendency of the O.A. though the original applicant died his sons have prosecuted this matter further.

3. Vide the impugned order, respondent no. 3 had directed recovery of the amount of Rs. 64,743/- from the deceased Government employee i.e. original applicant on the ground that his pay was wrongly fixed on higher side because of which excess payment was made to the applicant to the tune of Rs. 64,743/-. The said amount was accordingly recovered from the amount of gratuity payable to the deceased Government employee. In the present O.A., as stated hereinabove, the applicant has prayed for quashment of the said order of

recovery and consequently to refund the amount, which has been recovered from the amount of gratuity payable to the deceased Government employee.

4. Shri K.B. Jadhav, learned counsel appearing for the applicant submitted that in view of the law laid down by the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., AIR 2015 SC 596**, the impugned order directing recovery has to be held illegal, since such recoveries were made impermissible by the Hon'ble Apex Court vide the aforesaid judgment. Learned counsel further submitted that it is nowhere the case of the respondents that the excess payment was made to the applicant because of any misrepresentation made by the applicant. Learned counsel submitted that the Hon'ble Apex Court has also observed that if the excess payment has been made without any active and foul role on part of the Government servant and because of the mistake on part of the employer and if the said amount is sought to be recovered after the retirement of the Government employee or within one year of his retirement, directing such recovery will be iniquitous and hence has set aside the orders of such recoveries. Learned counsel submitted that in the present matter the recovery was directed against the applicant

on the verge of his retirement and in excess payment made, there was no allegation that it was made because of some fraud played by the applicant or misrepresentation made by him. In the circumstances, learned counsel prayed for allowing the O.A., thereby setting aside the impugned order and consequently to direct the respondents to refund the amount so recovered from the gratuity of the deceased Government employee with interest thereon.

5. The respondents have filed their affidavit in reply and have denied the contentions so raised by the applicant in the O.A., as well as, opposed the prayers made therein. Mrs. Deepali S. Deshpande, learned Presenting Officer reiterating the averments taken in the affidavit in reply submitted that there is nothing on record to show that the deceased Government employee at any time lodged his protest when the amount was recovered. Learned P.O. submitted that it is not the case of the applicant that he accepted the balance amount of gratuity paid to him reserving his right to challenge the said recovery. Learned P.O. submitted that it is not also the case of the applicant that the recovery as has been made was unsustainable or that the pay verification was wrongly done resulting in directing the recovery of excess payment from the gratuity amount of the deceased

Government employee. For all aforesaid reasons the learned P.O. prayed for dismissal of the O.A.

6. I have considered the submissions made on behalf of the applicant as well as the respondents. I have also gone through the documents placed on record by the parties. The applicant was working on the post of Assistant Sub Inspector (ASI), which is a Class-III post. It is also not in dispute that the applicant retired on 31-07-2016 on attaining the age of superannuation. It is also not in dispute that the order directing recovery of the aforesaid amount was issued by respondent no.3 on 11/12-01-2016 i.e. while the applicant was in service. It is also not in dispute that the alleged excess payment amounting to Rs.64,743/- was recovered by the respondents from the amount of Gratuity payable to the Original Applicant. In premise of the facts as aforesaid now, it has to be considered whether the prayers as are made by the applicant can be granted in his favour and whether the law laid down in the case of **Rafiq Masih** (cited supra) would be applicable in the case of the applicant.

7. Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.**, (cited supra) has laid down certain guidelines in paragraph 12 of the said

judgment. I deem it appropriate to reproduce the said paragraph, which reads thus: -

*“12. 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, summarize 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 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.*

*(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employees, 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.”*

8. After having considered the guidelines laid down by the Hon’ble Apex Court laying down the circumstances in which the recovery would be impermissible in law, it is apparent that the case of the present applicant is squarely covered by the said

guidelines. The applicant belongs to Class-III category. The recovery was directed when the applicant was on the verge of retirement, in other words within a year of the date of his retirement. It is also not in dispute that the recovery which was directed was for the period in excess of 5 years before the recovery order was issued. The document on record shows that the recovery was shown for the payment made in the period of more than 15 years starting from 1996. As noted hereinabove, it is not the case of the respondents that any fraud is played by the applicant in getting alleged excess amount during the said period. On the contrary, it is the case of the respondents themselves that some mistakes have occurred in pay fixation of the applicant which resulted in making excess payment to him during the period between 1996 till the date of his retirement.

8. For all above reasons the recovery which has been made in the present matter from the amount of gratuity of the deceased Government employee (Original Applicant) cannot be sustained and deserves to be set aside. Though, now the Government employee is not surviving, his two sons prosecuted the matter further. The amount of gratuity from which the recovery was made by the respondents has to be held the property of the deceased Government servant, which the

present applicants are entitled to inherit. In the circumstances, the order can be passed directing to refund of the recovered amount to the present applicants. Insofar as the request made on behalf of the applicant that the said amount shall be refunded along with interest thereon, the same cannot be accepted for the reason that even in directing recovery of the said amount there are no mala fides on the part of the respondents and this was done during the course of the regular process of pay verification. In the circumstances, the request for interest is rejected. The respondents are directed to refund the amount of Rs.64,743/- to the present applicants within 4 months from the date of this order. There shall be no order as to costs.

**VICE CHAIRMAN**

O.A.NO.730-2021(SB)-2023-HDD-Recovery