IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14168 OF 2024

Shrinivas Ganesh Kulkarni
Age-60 years, Occu- Retired
R/a. S.No.39/A/213, Amrut Nagar
Room No.12, Building NO.3, Sinhgad Road
Manik Baug, Pune – 411041. ...Petitioner
Versus

1)Savitribai Phule Pune University
Through The Registrar Ganeshkhind,
Pune - 411 007.
2) The Principal Secretary,
Dept. of Higher and Technical Education,
Mantralaya, Mumbai.
3) Director of Higher Education, Maharashtra State,
having Office at 3, B.J. Road, Central Building
Pune - 411 001.
(E.mail: director.dhepune@nic.in)
4) Joint Director of Higher Education Pune Region,
Pune having Office at 17, Dr. Ambedkar Road,
Pune Division, Pune - 411 001. ...Respondents

Mr. Vaibhav Kulkarni a/w Mr. Prathamesh Deshpande & Ms.Disha Rathod, for the Petitioner.
Mr. Rajendra Anbhule (through V.C.) a/w Ms.Vaibhavi Shelar, for Respondent No.1.
Mr. P. P. Kakade, Addl.G.P. a/w Ms.Priyanka B. Chavan, AGP, for Respondent-State.

CORAM: G. S. KULKARNI & AARTI SATHE, JJ.

RESERVED ON: 28 JULY 2026
PRONOUNCED ON: 11 SEPTEMBER 2026

JUDGMENT (Per : Aarti Sathe, J.):-

1. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:-

> a) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ direction or order under Article 226 of the Constitution of India, 1950 quashing and setting aside the letter dated 17.04.2023 issued by the Respondent No. 1 showing recovery against the Petitioner & further direct the Respondent No. 1 to pay all the post retiral benefits to the Petitioner with immediate effect.
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> b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ direction or order under Article 226 of the Constitution of India, 1950 directing the Respondent No. 1 to award the benefit of Assured Career Progression Scheme from June 2017 and direct payment of arrears with appropriate interest.
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> c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ direction or order under Article 226 of the Constitution of India, 1950 directing the Respondent No. 1 to implement the 7th Pay Commission qua the Petitioner w.e.f. 01.01.2016 based on the existing pay scale i.e. 9300-34800 with Grade Pay of Rs. 5300 (after awarding the benefit of ACPS - 24 years continuous service).
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> d) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ direction or order under Article 226 of the Constitution of India, 1950 directing the Respondent No. 1 to pay the accumulated earned leave encashment benefit to the Petitioner as per the rules.
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> e) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ direction or order under Article 226 of the Constitution of India, 1950 directing the Respondent No. 1 to pay the interest accrued on the Provident Fund retained by the University to the Petitioner asper the rules.

2. The Petitioner, being a Class-III employee of Respondent No. 1-University, has challenged the legality of the notice dated 17th April 2023 issued by Respondent No. 1-University seeking to recover from the Petitioner an amount of Rs. 39,94,343/- on the ground that the same amounted to excess payment. The Petitioner is seeking further direction to release his gratuity, earned leave encashment, the arrears of the 7th Pay

Commission dues under the Assured Career Progression Scheme, and accrued interest on Provident Fund which is due to him. The recovery of the aforesaid amount, according to the Petitioner, is an arbitrary action taken by Respondent No. 1-University, and more particularly post-retirement of the Petitioner, the same cannot be made from the Petitioner.

3. Briefly the facts are as follows:

i. The Petitioner joined the services of Respondent No. 1-University on the post of "Data Entry Operator" as per instructions of Respondent No. 1-University on job-work basis on 7th June 1993. Thereafter, on 22nd July 1993, the Petitioner was issued an official appointment order for the post of "Data Entry Operator" in the pay scale 1200-30-1560-EB-40-2040.

ii. The Petitioner was given temporary appointment in Respondent No. 1-University as a Data Entry Operator on 22nd July 1993 as stated aforesaid. On 26th September 1994, a fresh appointment letter was issued to the Petitioner, by which the Petitioner was appointed to the post of Data Entry Operator on permanent basis. On 22nd August 1995, since the Petitioner was already in the service of Respondent No. 1-University, it also protected his basic pay, and a pay protection letter was issued to the Petitioner of even date. Thereafter, on 10th December 1998, a Government Notification was issued by the Finance Department of the State of Maharashtra, in which the pay scale of Rs. 9300-34800 with a grade pay of

Rs. 4300 had been provided to the position of the Data Entry Operator. Thereafter, again on 4th February 1999, through a Government Notification, the post of Data Entry Operator was included in the 5th Pay scale and accordingly the pay band of the Petitioner was determined between 4000-100-6000.

iii. On 13 January 2001, Respondent No.1 issued a letter to the Petitioner intimating him of his confirmation on the said post with effect from 7th June 1995.

iv. Thereafter, on 27th June 2001, a letter was issued by the Department of Higher and Technical Education, which showed that the pay scale of Rs 9300-34800 with a grade pay of Rs. 4300 had been provided to the position of the Data Entry Operator at North Maharashtra University, Jalgaon. A resolution dated 5th August 2005 was passed by the Management of Respondent No. 1-University, through which the employees appointed from the university funds were to be given salary at par with the employees working on the sanctioned post of the Government. Further, on 17th October 2006, Respondent No. 1-University, by a letter of even date, awarded the benefits of the Time Bound Promotion Scheme to the Petitioner with effect from 7th June 2005, after completion of 12 years service in Respondent No. 1-University. It is the Petitioner's contention that the Petitioner was also supposed to receive the second benefit of the Assured Career Progression

Scheme (scheme of promotion/next pay band), but the same was not given to the Petitioner, and the said benefit was there, up to the date of his retirement.

v. On 30th January 2019, a Gazette Notification was issued by the Finance Department of the State of Maharashtra, which showed the pay scale for the position of Data Entry Operator under the Maharashtra Public State Commission (MPSC) as Rs.9300-34800 with grade of Rs. 4300.

vi. The Petitioner retired from the service of Respondent No. 1-University on 31st December 2022 due to superannuation. After his retirement, the Petitioner was also supposed to receive benefits such as gratuity, earned leave encashment, and interest due on Provident Fund. It is the contention of the Petitioner that, however, the said amount was not paid to him. Therefore, in respect thereof, the Petitioner enquired/approached Respondent No. 1-University, to provide him with a clarification regarding the same.

vii. On 17th April 2023, Respondent No. 1-University issued a letter to the Petitioner and informed him that there was an error in his pay fixation as per the 6th Pay Commission, and therefore, there is a recovery to the tune of Rs. 39,94,343/- from him. The letter also stated that Respondent No. 1-University would take suitable action for the said recovery. The Petitioner thereafter was informed verbally that he would not be paid gratuity and earned leave encashment unless he repaid the aforesaid amount, which was given to him as excess payment. Respondent No. 1-University also issued to the Petitioner a pay revision chart showing that his pay scale under the 6th Pay Commission ought to have been Rs.5200-20200 with grade pay of Rs. 2400 instead of Rs. 9300-34800 with grade of pay of Rs. 4300.

viii. Between 8th May 2023 and 21st August 2023, the Petitioner addressed number of letters to Respondent No. 1-University and submitted that he had never demanded any pay scale, and that his salary was fixed by Respondent No. 1-University, and now since he had retired, it would not be possible for him to return the said amount which Respondent No. 1-University had claimed had been paid in excess towards the salary. He further requested Respondent No. 1-University to release the dues which had not been paid to him yet. However, Respondent No. 1-University has not replied to any of the aforesaid letters of the Petitioner, and it is the Petitioner's contention that the said amount still remains unpaid.

ix. As the Petitioner had not received any reply from Respondent No. 1-University, the Petitioner once again issued a reminder letter on 11th September 2023 with a copy to the Governor of Maharashtra/ Chancellor of Respondent No. 1-University, Minister of Higher and Technical Education Department and the Secretary of Higher Education, Pune to the effect that the retiral dues of the Petitioner be returned to him. It is the Petitioner's contention that he has retired from his services from 31st December 2022, but except his Provident Fund, he has not received any of his post-retiral benefits such as gratuity, earned leave encashment, arrears of 7th Pay Commission, and accrued interest of Provident Fund amount.

x. It is in the backdrop of the aforesaid facts that we proceed to decide the present petition, as to whether the letter dated 17th April 2023 issued by Respondent No. 1-University to the Petitioner seeking to recover an amount of Rs. 39,94,343/- as excess payment of salary, which was paid to him allegedly by mistake, is a correct position which has been taken by Respondent No. 1-University.

4. Learned counsel Mr. Vaibhav Kulkarni, along with Mr. Prathamaesh Deshpande and Ms. Disha Rathod appeared on behalf of the Petitioner, Mr. Rajendra Anbhule along with Ms. Vaibhavi Shelar appeared for Respondent No. 1-University, and Mr. P.P. Kakade Addl. GP along with Ms. Priyanka B. Chavan AGP appeared on behalf of the State.

5. Learned Counsel for the Petitioner, at the very outset, has submitted that the facts of the present case are squarely covered by the decision of the Supreme Court in the case of **State of Punjab and others v/s. Rafiq Masih and Ors.**[1], wherein it has been held that insofar as Class-III and Class-IV employees are concerned, even where the payments have mistakenly been made by the employer in excess of their entitlement, yet in those cases recoveries by the employers from such employees would be impermissible in law. He has further submitted that a Co-ordinate bench of

1 2015(4) SCC 334

this Court in the case of **Anil Pralhad Dhande v/s The State of Maharashtra and Ors.**[2] has followed the view taken by the Supreme Court in **Rafiq Masih (supra)**, and in view thereof, the present matter also, on similar facts, stands covered by the aforesaid decisions. He has further submitted that in the present case also the Petitioner was also a Class III employee, and applying the principles as enunciated in the case of **Rafiq Masih (supra)**, Respondent No. 1-University would not be correct in recovering the post-retiral benefits from the Petitioner.

6. It is the contention of learned Counsel for the Petitioner that the Petitioner had already retired from his services on 31st December 2022, and Respondent No. 1-University had not paid him any of the post-retiral benefits, except his provident fund. The services of the Petitioner are non-pensionable, and his post-retiral benefits are the only source of income which the Petitioner has, and Respondent No. 1-University by seeking the alleged excess amount of Rs. 39,94,343/-, has, in that sense, trampled upon the Petitioner's only source of income. Learned Counsel for the Petitioner submits that in fact, the Petitioner had addressed several letters to Respondent No. 1-University, but till date, there has been no reply from Respondent No. 1-University in respect of the alleged erroneous and excess payment which Respondent No. 1-University contends has been made to the Petitioner.

2 Writ Petition No. 13029 of 2022

7. *Per contra*, learned counsel for Respondent No. 1-University Mr Anbhule seeks to place reliance on the affidavit-in-reply filed by Dr. Prasad Vishnu Kulkarni on behalf of Respondent No. 1-University to contend that the action taken by Respondent No. 1-University showing recovery against the Petitioner was the correct action. He has sought to place reliance on the fact that on 22nd July 1993, the Petitioner came to be appointed on the post of Data Entry Operator, Class-III on a temporary basis, and he joined the University on the said date. Thereafter, as per advertisement No. 149/151/1993 and subsequent interview held on 1st September 1994, the Petitioner by letter from Respondent No. 1-University dated 26th September 1994 came to be appointed on the post of Data Entry Operator, Class-III under the university fund on the pay band of Rs. 1200-30-1560-EB-40-240. Thereafter, a Government Notification dated 4th February 1999 was issued, wherein the post of Data Entry Operator was included in the 5th Pay Scale, and the pay band of the Petitioner was 4000-100-6000. The Petitioner came to be confirmed by letter dated 7th June 1995 on the post of Data Entry Operator created from the university funds, and a Time Bound Promotion was given to the Petitioner on 7th June 2005. He also submitted that the appointment of the Petitioner was from the funds of Respondent No. 1-University, and as per Resolution No. M:158-05 dated 5th August 2005 passed by the management of Respondent No. 1-University, the employees appointed from the university funds were to be given salary at par with the employees working on the sanctioned post of the Government. Thereafter,

by the Government Notification dated 7th October 2009, the 6th Pay Commission came be to be implemented in Respondent No. 1-University, and in the said notification, for the post of Data Entry Operator at serial number 134, the pay band was fixed at PB-2,9300-34800 with Grade Pay Rs. 4300. He therefore contended that since the appointment of the Petitioner was made on pay band of Rs. 1200-30-1560-EB-40-240 by 5th Pay scale, PB Rs. 4000-100-6000 was given to the Petitioner. In view of that, as per the 6th Pay Commission, the PB 15200-20200 grade pay 2400 was required to be given to the Petitioner, but by mistake PB-2,9300-34800 Grade Pay 4300 was made applicable to the Petitioner, and in view thereof, the excess salary of Rs. 37,085,83/- was paid to the Petitioner, which Respondent No. 1-University has now sought to recover from the Petitioner. He further submitted that while applying the 6th Pay Commission, the Petitioner had given an undertaking to the effect that if any excess payment may be found to be made as a result of incorrect fixation of pay for any excess payment detected in light of discrepancies noticed subsequently, he would refund the said amount to the Government either by adjustment for future payment, or otherwise. The relevant paragraphs of affidavit filed by Dr. Prasad are reproduced below:-

> 5. I say that by letter dated 22/07/1993 issued by the respondent University the petitioner came to be appointed on the post of Date Entry Operator (Class-3) on temporary basis and he joined the service of the respondent University. As per Advertisement No. 149/151/1993 and subsequent interview held on 01/09/1994, the petitioner by letter dated 26/06/1994 came to be appointed on the post of Date Entry Operator (Class 3) under the University fund on the pay band of 1200-30-1560-EB-40-240.

> 6. I say that as per the Government Notification dated 04/02/1999, the post of Data Entry Operator was included in Fifth Pay Scale and the Pay band of Petitioner was 4000-100-6000. The petitioner came to be confirmed by letter dated 07/06/1995 on the post of Data Entry Operator, created from University fund. Time bound promotion was also given to the petitioner on 07/06/2005.
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> 7. I say that the appointment of the petitioner was from the funds of the University. As per the Resolution No. M:158/05, dated 05/08/2005 passed by the Management of the Respondent University, the employees appointed from the University funds are given salary in par with the employees working on sanctioned post of the Government.
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> 8. I say that as per Government Notification dated 07/10/2009, the Sixth Pay Commission came to be implemented in the respondent University. In the said Notification, at serial no.134 the post of Data Entry Operation is given pay band of PB-2, 9300-34800 Grade Pay 4300.
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> 9. I say that as the appointment of the petitioner was made on the pay band of 1200-30-1560-EB-40-240, by Fifth Pay Scale (04/02/1999) the Pay band of 4000-100-6000 was given to the petitioner. In view of this, as per Sixth pay Commission, PB-1, 5200-20200 Grade Pay 2400 was required to be given to the petitioner. But, by mistake PB-2, 9300-34800 Grade Pay 4300 is made applicable to the petitioner. It is seen that, while applying the Sixth Pay Commission to the petitioner, the pay scale of PB-2, 9300-34800 Grade Pay 4300 has been given wrongly to the petitioner. As a result of this, by way of salary, an amount of Rs. 37,85,083/- has been paid in excess to the petitioner.
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> 10. I say that while applying Sixth pay Commission to the Petitioner, the Petitioner has given undertaking to the effect that any excess payment that may be found to have been made as a result of incorrect fixation of pay for any excess payment detected in the light of discrepancies noticed subsequently Will be refunded by him to the government either by adjustment against future payments due to him or otherwise.The copy of the undertaking given by the petitioner is annexed to the affidavit at "Exhibit-A".

8. Learned Counsel for the Respondents also relied upon the additional affidavit-in-reply filed by Dr. Prasad Vishnu Kulkarni, wherein in it was once again reiterated that the payment of excess salary was made erroneously to the Petitioner, and in fact, the Petitioner had misled the Court by citing the schedule indicating the designation of Data Entry Operator (Grade I-Bioinformatics) with regard to the existing and revised pay scale of the Maharashtra Government Notification dated 7th October 2009. He

submitted that in fact, the Petitioner's designation is of Data Entry Operator (Grade-III) at serial No. 252 of the Government Notification dated 7th October 2009, wherein the existing pay scale of Rs. 4000-6000 and revised pay structure Rs. 5200-20200 with Grade Pay 2400 is what is payable to the Petitioner. He therefore submitted that the Petitioner has deliberately concealed/suppressed the facts by not attaching the complete Government Notification dated 7th October 2009, and therefore the petition is liable to be dismissed and does not deserve any consideration. The relevant paragraphs of the additional affidavit dated 11th December 2024 are reproduced below:-

> 5. I say that by letter dated 22/07/1993 issued by the respondent University the petitioner came to be appointed on the post of Date Entry Operator (Class-3) on temporary basis and he joined the service of the respondent University. As per Advertisement No. 149/151/1993 and subsequent interview held on 01/09/1994, the petitioner by letter dated 26/06/1994. came to be appointed on the post of Date Entry Operator (Class 3) under the University fund on the pay band of 1200-30-1560-EB-40-240. 7" October, 2009
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> 6. I say that the Petitioner has vehemently misled the Honourable Court by citing the schedule indicating the scale for the Designation of Data Entry Operator (Grade I - Bioinformatics) with regard to the existing and revised pay structure in serial no. 134 of the Maharashtra Government Notification of 7" October, 2009.
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> 7. I say that the Petitioner's designation is of Data Entry Operator (Grade - III of the serial no 252 of the Maharashtra Government Notification of T' October, 2009 where it mentions the existing Pay scale 4000 - 6000 and revised pay structure 5200 - 20200 Grade Pay 2400 to which the Petitioner belongs. The copy of the Government notification dated 7th October, 2009 is annexed to this Affidavit as Exhibit A
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> 8. I say that, inadvertently and by mistake PB- 2, 9300 - 34800 Grade Pay 4300 was made applicable to the Petitioner to which he doesn't belong.
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> 9. I say that, as per the Government Notification of 7th October, 2009 issued by Government of Maharashtra the Data entry Operator varies from Department to department and also the pay scale differs at the Respondent University hence the pay scale of the Petitioner is different from the pay scale of the Data Operator (Bioinformatics)

> 10. I say that the Petitioner deliberately concealed/ suppressed the facts by not attaching the complete Maharashtra Government Notification of 7" October, 2009 disclosing the schedules..

ANALYSIS & FINDINGS

9. We have heard learned Counsel for the parties and perused the papers and proceedings with their assistance. At the very outset, this Court has passed several orders in the present petition, and in one of the said orders it has been categorically recorded by the Co-ordinate bench of this Court that, they were of the *prima facie* view that the facts of the present case are covered by the decision of the Supreme Court in **Syed Abdul Qadir v/s State of Bihar and others**[3] and in the case of **Rafiq Masih (supra)**. The Co-ordinate bench of this Court also directed the Respondent No. 1-University to deposit the entire retiral dues of the Petitioner in this Court, including gratuity amount on or before 14th November 2024, pending the final disposal of the aforesaid Petition by order dated 16th October 2024. Pursuant to the aforesaid order, Respondent No. 1-University had deposited Demand Draft (DD) No. 187828 dated 11th November 2024 amounting to Rs. 7,36,164/- drawn from Bank of Maharashtra, Pune University Campus Branch and DD No. 187829 dated 11th November 2024 amounting to Rs. 3,16,387/- drawn from Bank of Maharashtra, Pune University Campus Branch with this Court. The relevant order of the Co-ordinate bench of this Court dated 16th October 2024 is reproduced below:-

> 1. The Petitioner was working in Class III category as a Data Entry Operator. He joined service on 7" June, 1993. During his service tenure, he was found to be entitled for the pay commission recommendations and

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3 2009(3) SCC 475

accordingly, he was extended the monetary benefits as per the Sixth Pay Commission recommendations from 7th October, 2009. He superannuated on 31" December, 2022.

2. Since the retiral benefits have not been paid to him approached the Employer University for release of the benefits. It thereafter that the Deputy Registrar addressed a letter dated 17" April, 2023, to the Petitioner, informing him that the benefits he was receiving from 1" January, 2006 were accidentally paid though he was not entitled to it and a recovery of Rs. 39,94,343/- is to be made from the Petitioner's retiral dues.

3. Prima facie, the law laid down in Syed Abdul Qadir vs. State of Bihar and others, 2009 (3) SCC 475 and State of Punjab and other vs. Rafiq Mash (White Washer) etc., (2015) 4 SCC 334 = AIR 2015 SC 696, would be applicable.

4. Issue notice to the Respondents, returnable on 21st November, 2024. The learned Advocate Mr. Anbhule waives service of notice on behalf of Respondent No.1. The learned AGP waives service of notice on behalf of Respondent Nos. 2 to 4.

5. The learned Advocate for Respondent No.1- University desires to file an affidavit-in -reply. Let such affidavit in reply be filed, on or before 13" November, 2024.

6. In the meanwhile, considering the law laid down in Syed Abdul Qadir and Rafig Mash (White Washer) (supra), the University would deposit the entire retiral dues of the Petitioner in this Court, including gratuity amount, on or before, 14th November, 2024.

10. Considering the facts of the present case, and also the orders passed by the Co-ordinate bench of this Court as reproduced above, and on perusal of the decision of the Supreme Court in **Rafiq Masih (supra)**, we are of the considered view that the facts in the present case get squarely covered by the decision in **Rafiq Masih (supra)**. We come to this conclusion considering that the Petitioner in the present case was also a Class III employee, and insofar as the contention of Respondent No. 1-University is concerned, that the Petitioner had given an undertaking during the application of the 6th Pay Commission that he would refund the amount to the Respondent No. 1-University in the event there were any discrepancies or mistakes while calculating the said amount, the same would not come in

the way of the Petitioner's case, inasmuch as the decision in case of **Rafiq Masih (supra)** categorically lays down the law that insofar as recovery from employees belonging to Class III and Class IV service is concerned, the same is impermissible in law, and even if it has been mistakenly been made by the employees. Considering the clear position of law as set out in the case of **Rafiq Masih (supra)**, we do not see as to how the facts of the present case can be differentiated and the guidelines as laid down by the Supreme Court in **Rafiq Masih (supra)** would not be applicable to the present case. The relevant paragraphs of the decision of **Rafiq Masih (supra)** are reproduced below:-

> 7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.
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> 8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.
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> 9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality can be found in Articles 14 to 18 contained in Part Ill of the Constitution of India, dealing with "fundamental rights". These articles of the Constitution, besides assuring

equality before the law and equal protection of the laws, also disallow discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracised section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39-A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "directive principles of State policy". These articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice—social, economic and political, by inter alia minimising monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. In view of the aforestated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

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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.

(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.

10. We are also in agreement with the submission made on behalf of the learned Counsel for the Petitioner that the Co-ordinate bench of this Court in the case of **Anil Pralhad Dhande (supra)** has also applied the principles/guidelines as set out in the **Rafiq Masih (supra)** to hold that any retiral benefits which are sought to be taken from a Class III employee cannot be taken, inasmuch as the Petitioner therein, fell in the categories (i) and (ii) of the guidelines as laid down in the case of **Rafiq Masih (supra)**. The relevant paragraphs of the order of the Co-ordinate bench of this Court in the case **Anil Pralhad Dhande (supra)** are reproduced below:-

> 4. Learned counsel for the Petitioner submitted that the Petitioner retired as Class-III/Group 'C' employee and the recovery order is issued after his retirement and therefore, the same is directly in contravention of law laid down by the Hon'ble Supreme Court in the case of State of Punjab and others v/s. Rafiq Masih (White Washer) and Ors. 1 . He submitted that this Judgment is recently followed by this Hon'ble Court in a Group of petitions under its order dated 27 March 2023 passed in Writ Petition No. 14575 of 2018 and others. Relying on the said judgment, the Petitioner prayed for quashing and setting aside the impugned orders.
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> 5. The learned counsel for the Respondent/Zilla Parishad relying on the Reply Affidavit filed by the Zilla Parishad, contended that the Petitioner has given undertaking and consent to the office of the Zilla Parishad that he is liable to pay back any excess amount of pension if paid to him and therefore has no case. Respondent / Zilla Parishad has justified the impugned orders relying on judgment of High court of Punjab and Haryana and Ors. v/s. Jagdev Singh 2 .
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> 6. We have considered rival submissions. The Respondent/Zilla Parishad has not disputed that the Petitioner is a Class-III employee and that the first impugned order is passed after his retirement. In that view of the matter, the present case is squarely covered by the Judgment of Rafiq Masih (supra). The Hon'ble Supreme Court in the said case has laid down following parameters.
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> **“"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 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 employees, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employers right to recovery."

7. The Petitioner squarely falls in categories (i) and (ii) above. It is important to note that in the Jagdev Singh's case (supra), the judgment relied by the Respondent/Zilla Parishad, the recovery was claimed from Class-I officer who was a Judicial Officer to whom, revised pay scale was granted after he furnished an undertaking and the recovery was initiated. The present case is clearly distinguishable on the ground that, the Petitioner is Class-III employee and not Class-I employee undisputedly. Also, it is not disputed before us that in earlier pension payment order dated 13 June 2019, there was no reference to excess amount recoverable from the Petitioner. This order is produced on record.

11. We are also of the view that the letter dated 17th April 2023 in the present case seeking to recover the alleged excess amount from the Petitioner has been issued post the retirement of the Petitioner, i.e., on 31st December 2022. This, to our mind, also strengthens the case of the Petitioner that an amount which has already been paid to the Petitioner cannot now be recovered from the Petitioner on the ground of a mistake on the part of the employer. Further, it is not disputed before us that the Petitioner is a Class III employee, and hence the decisions in **Rafiq Masih (supra)** and **Anil Pralhad Dhande (supra)** would completely cover the facts of the present case. Even otherwise for recovery of such amounts even a civil suit was hopelessly time barred.

12. Insofar as the reliance by learned Counsel on behalf of the Respondent No. 1-University on the case of **High Court of Punjab and Haryana v. Jagdev Singh**[4] is concerned, the same is distinguishable from the facts of the present case, inasmuch, as in the said case the recovery was claimed from a Class I officer, who was a judicial officer, and to whom a revised pay scale was granted after he furnished an undertaking and recovery was initiated. In the facts of the present case, it is an undisputed fact that the Petitioner is a Class III employee and not a Class I employee, and therefore, the decision in **Jagdev Singh (supra)** as sought to be relied on by learned Counsel for Respondent No. 1-University would not be applicable to the facts of the present case. Insofar as the case of **Mandeep Singh Kohli and Others v. Union of India**[5] is concerned, the same is distinguishable from the facts of the present case, inasmuch as the Petitioners therein had themselves challenged the classification of Data Entry Operators under the pay scale of Rs. 11500-1500 before the Central Administrative Tribunal (CAT), subsequent to which the CAT had directed the Respondents therein to examine whether similarly situated employees had been granted a higher pay scale on the basis of any order of a Court. Pursuant to the same, the Respondents had provided the Petitioners with the pay scale of Rs. 1350-2200, after taking undertakings from each Petitioner that if they were found disentitled for the pay scale in the future, the dues thereof could be recovered from their pay and allowances, including retiral benefits. The undertakings

4 (2016) 14 SCC 267

5 2021 (1) Mh.L.J. 370

were therefore taken in view of the pendency of the issue of the pay scale applicable to the Petitioners therein. Thereafter, an order was passed by the Supreme Court, through which the Petitioners were held disentitled for the higher pay scale. However, in the present case, the Petitioner was paid salary under the pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4300 merely due to an alleged mistake by the Respondent Authorities. Further, in the case of **Mandeep Singh Kohli (supra)**, the Petitioners therein were held disentitled for the higher pay scale after a period of merely 20 months, whereas in the present case the Petitioner was informed that he was disentitled for the pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4300 only after his retirement on 31st December 2022, after a lapse of considerable amount of time.

13. Considering the aforesaid factual and legal backdrop, we are of the opinion that it would be illegal and arbitrary to recover the amount of Rs.39,94,343/- from the Petitioner's retiral benefits, more so when the Petitioner is a Class III employee. In view thereof, we are of the view that this Writ Petition deserves to succeed, and the illegal recovery made by Respondent No. 1-University deserves to be set aside. We therefore pass the following order which will meet the ends of justice:-

ORDER

i) Letter/notice dated 17th April 2023 issued to the Petitioner by Respondent No. 1-University is hereby quashed and set aside to the extent it directs recovery from the Petitioner.

The amount, if recovered from the Petitioner under the letter/notice dated 17th April 2023, be refunded to the Petitioner within a period of **three months** from the date of uploading of this order.

ii) Respondent No. 1-University is directed to pay to the Petitioner all the post-retiral benefits, including the benefits of the Assured Career Progression Scheme from June 2017, along with arrears and appropriate interest, and further, pay the accumulated leave encashment and the interest accrued on the Provident Fund to the Petitioner.

iii) Respondent No. 1-University is directed to implement the 7th Pay Commission qua the Petitioner w.e.f. 1st June 2016, based on existing pay scale, i.e., Rs. 9300-34800 with Grade Pay Rs. 4300 (after awarding the benefits of Assured Career Progression Scheme-24 years' continuous service).

iv) These directions be complied by Respondent No.1-University within a period of **three months** from the date of uploading of this order.

v) Rule is made absolute in the above terms. Writ Petition is disposed of. No costs.

(AARTI SATHE, J.) **(G. S. KULKARNI, J.)**

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