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IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 401 OF 2025**

Mr. Domingos Francisco Gama,
Age 63 years,
Retired Leading Fire Fighter
(Directorate of Fire Emergency Services)
Resident of House No. 99/A, Ambulor,
Verna, Salcete, South Goa.

... Petitioner***Versus***

1. The State of Goa
Through its Chief Secretary,
Secretariat, Porvorim, Goa.
2. Secretary-Finance,
Government of Goa,
Secretariat, Porvorim, Goa.
3. Directorate of Accounts,
Through Director of Accounts,
Government of Goa,
Panaji, Goa.
4. The Directorate of Fire and Emergency
Services,
Through its Director
St. Inez, Panaji, Goa.

...Respondents

Mr. Terence B. Sequeira with Mr. Yash Kunde, Advocates for the Petitioner.

Mr. Prashil Arolkar, Additional Government Advocate for Respondent Nos. 1 to 4.

**CORAM : VALMIKI MENEZES &
AMIT S. JAMSANDEKAR, JJ.**

DATED : 12TH OCTOBER, 2026

ORAL JUDGMENT (per Valmiki Menezes, J.):

1. Heard learned Advocates for the parties.
2. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned Advocates for the parties, the matter is finally heard and disposed of. Learned Additional Government Advocate Mr. Prashil Arolkar waives service of notice on behalf of Respondent Nos. 1 to 4.
3. The Petitioner has approached this Court seeking the following reliefs:

“a) for Writ of Mandamus or any other appropriate writ, order or direction for quashing and setting aside the Impugned Orders dated 15.11.2022 and corrigendum dated 25.01.2023 bearing DFES/SZ/PF-109/2022-23/2164 changing the date of ACPs-I and Corrigendum dated 25.01.2023 bearing DFES/SZ/PF-109/2022- 23/2165 changing the date of MACP-II, and consequently restoring the 1st Financial up- gradation under ACP Scheme w.e.f. 14.09.2005 and 2nd Financial Upgradation under MACP Scheme w.e.f. 14.09.2013;

b) for a Writ of Mandamus, or any other appropriate writ, order or direction, directing the Respondent Authorities to return the amount of Rs. 1,96,822/- along with interest at the rate of 12% from the date of such recovery or at such rate this Hon'ble Court may deem fit.;

d) for a Writ of Mandamus, or any other appropriate writ, order or direction, subject to the grant of the above reliefs, directing the Respondent Authorities to send the pension papers to the Directorate of Accounts so that the pension and other pensionary along with other consequential benefits be recalculated taking into consideration the original pay fixations and increments which were granted to the Petitioner prior to the Impugned order dated 15.11.2022 and corrigendum dated 25.01.2023 changing the date of ACPS-I and Corrigendum dated 25.01.2023 changing the date of MACP- II, and grant all consequential increments and benefits;

e) for a writ of mandamus or any other writ, direction or order in the nature of mandamus, directing the Respondent Authorities to pay interest at the rate of 12% per annum or at such rate as may be deemed fit by this Hon'ble Court for the delay in releasing the pension, gratuity and other retirement benefits from the date of retirement till the payment of the same;”

4. During the pendency of this petition, since the Petitioner's pension papers have been sent to the Director of Accounts by the Directorate of Fire and Emergency Services, prayer Clause (d) has become infructuous. On instructions, Mr. Terance Sequeira, learned Advocate appearing for the Petitioner submits that the Petitioner will not press for the relief sought in prayer Clause (a). We therefore confine our decision to the relief sought in prayer Clause (b) and (e).

5. The main contention of the Petitioner is that the impugned orders dated 15.11.2022 and two Corrigenda dated 25.01.2023 issued to the impugned order are arbitrary and contrary to the law laid down by the Hon'ble Supreme Court in *State of Punjab V/s Rafiq Masih (White Washer) etc.*¹, *Shyam Babu Verma and others Vs. Union of India*² and as followed by this Court in *Shridhar s/o Baburao Gambhire Vs. The Chief Executive Officer*³.

6. To examine whether the impugned order suffers from any arbitrariness, we make reference to certain dates. The Petitioner was working as Leading Fire Fighter in the Directorate of Fire and Emergency Services as on his date of retirement, which is 31.10.2022. He has been conferred 1st ACP on 14.09.2005 and 2nd ACP on 14.09.2013 by the Government of Goa. Whilst calculating the ACPs, the Petitioner was paid according to increments specified in Office Memorandum (OM) dated 15.05.2012, issued by the Central Government and adopted by the Goa Government. Throughout his service, he was receiving his salary based

¹ AIR 2015 SC 696.

² (1994) 2 SCC 521

³ Order dated 17.02.2026 in Writ Petition No. 4963 of 2007

upon extension of the increments which were paid according to OM dated 15.05.2012.

7. The Government of Goa, after the Petitioner had retired, issued the impugned orders seeking recovery of the increments paid in accordance of OM dated 15.05.2012, on the premise that the Petitioner was not entitled to these increments, since the Petitioner was held not to be eligible of having an increment, as the annual date of increment of the Petitioner was September, 2005.

8. Whilst it may be true that the Petitioner may not have been entitled to the increment, the fact of the matter remains and which is not in dispute, that at no point of time, the Petitioner has issued any undertaking to the Government of Goa that in the event of any payments having been made beyond his entitlement, he would refund the same to the State.

9. In *Rafiq Masih* (supra), the Hon'ble Supreme Court has dealt with the right of the State to recover excess payment in relation to periods which are mistakenly made by the employer, in excess of the entitlement. The following observations have been made in para 12 of that Judgment. *Rafiq Masih* (supra):

“12. Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar, wherein this Court recorded the following observation in para 58: (SCC p. 491)

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana³, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Gangaram v. Directors, B.J. Akkara v. Govt. of India, Purshottam Lal Das v. State of Bihar 10, Punjab National Bank v. Manjeet Singh¹¹ and Bihar SEB v. Bijay Bhadur¹²"

(emphasis supplied)

10. **Rafiq Masih** (supra) was followed in **Thomas Daniel Vs. State of Kerala**⁴ at paras 11, 12 and 13, it has taken a similar view after following **Rafiq Masih** (supra). The relevant paragraphs are quoted below:

“11. In Col. B.J. Akkara (Retd.) v. Government of India this Court considered an identical question as under:

“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

⁴ AIR 2022 SC 2153

following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar[(1996) 4 SCC 416: 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):

(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 back recovery 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 the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar 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."

12. In Syed Abdul Qadir v. State of Bihar excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/understanding of a Rule or Order. It was held thus:

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that

was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

13. *In State of Punjab v. Rafiq Masih (White Washer) wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:*

“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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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.”

11. The aforementioned views have been further followed by this Court in ***Shridhar s/o Baburao Gambhire*** (*supra*)

after referring to the facts which are similar to that of the Petitioner's case. The relevant paragraphs are quoted below:

*“11. In the present case, the petitioner is already retired on 30.11.2005 and the objection was raised on 02.07.2005 just before few months of his retirement and the impugned order was passed on 08.06.2007. During the entire service tenure, no objection was raised by the respondents about the petitioner's qualification and pay scale. There is no allegation of fraud or misrepresentation on the part of the petitioner. In view of the aforesaid factual position and the settled legal principles laid down by the Hon'ble Supreme Court in **Rafiq Masih** (supra) and **Shyam Babu Verma** (supra), it is evident that the petitioner was neither guilty of any misrepresentation nor fraud and the alleged excess payment, if any, was made by the respondents themselves during the course of his long service career. The objection regarding pay fixation was raised at the fag end of service and recovery has been sought after the petitioner's retirement, which is clearly impermissible in law*

*12. However, it is equally well settled that pension is a statutory right governed by the applicable Pension Rules and the employee cannot claim continuation of an incorrect pay fixation contrary to the applicable statutory provisions. While recovery of the alleged excess amount is impermissible in view of the law laid down by the Hon'ble Supreme Court in **State of Punjab vs. Rafiq Masih** (supra) and **Shyam Babu Verma vs. Union of India** (supra), the respondents cannot be precluded from regulating and re-fixing the pension of the petitioner in accordance with the applicable Rules. Therefore, though the direction of recovery deserves to be set aside, the respondents would be at liberty to re-fix the pension of the petitioner strictly in accordance with law. Such re-fixation, however, shall operate prospectively and no recovery shall be effected in respect of the amounts already paid to the petitioner till date. The impugned order, therefore, suffers from arbitrariness to the extent it directs recovery from the petitioner after his retirement and deserves to be quashed*

and set aside to that limited extent. Hence, we pass the following order:-

ORDER

(i) The writ petition is partly allowed.

(ii) The impugned order dated 08.06.2007 passed by respondent No.1 is quashed and set aside to the extent it directs recovery of alleged excess payment from the petitioner.

(ii) The respondents are restrained from effecting any recovery from the petitioner in respect of any amount already paid to him during his service tenure or from his pensionary benefits.

(iv) The respondents are at liberty to re-fix the pension of the petitioner strictly in accordance with the applicable Rules and Government Resolutions, if required, within a period of eight weeks from today. However, such re-fixation shall operate prospectively and shall not result in recovery of any amount already paid.

(v) No order as to costs."

12. Considering that the Petitioner had at no point of time given an undertaking to the Department in relation to having to refund any excess payments made and considering that the 1st ACP and 2nd ACP relate back to the year 2005 and 2015 respectively, clearly there would be undue hardship to the Petitioner if he was directed to refund the excess amount payable. Applying the ratio laid down in the Judgments of ***Rafiq Masih*** (supra), ***Shyam Babu Verma and others*** (supra), ***Shridhar s/o Baburao Gambhire*** (supra) and

Thomas Daniel to the facts of the present case, we make Rule absolute in terms of prayer Clause (d) of the petition.

13. Considering that Respondent No. 4 has already deducted an amount of Rs. 1,96,822/- from the Petitioner's pension, the same shall be forthwith refunded by the Respondent No. 4 to the account of the Petitioner. Considering that the Petitioner retired on 31.10.2022, and would be entitled to his 1st pension by 30.11.2022, though he was actually paid his 1st pension on 29.04.2023, there is a delay in making payment of pension from 30.11.2022 to 29.04.2023. We consequently direct that an amount calculated at 6% per month be paid as interest for the delayed payment of pension between the aforementioned dates.

14. Rule is made absolute in the above terms. The petition stands disposed of.

AMIT S. JAMSANDEKAR, J.

VALMIKI MENEZES, J.