

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 2680 OF 2004
WITH
CIVIL APPLICATION NO. 12083 OF 2005**

Purushottam s/o. Bhausahab Umbarkar & Ors. .. Petitioners
Versus
The State of Maharashtra & Ors. .. Respondents

Mr. Ajinkya Kale h/f. Mr. S.B. Talekar, Adv. for petitioners.
Mr. D.B. Bhange, A.G.P. for respondent/State.
Mr. N.B. Patil, Advocate for respondent Nos. 2 & 3.

**CORAM : A.V. NIRGUDE &
V.K. JADHAV, JJ.**

DATED : 14.09.2015

P.C. :-

1. Heard. Petitioner Nos. 1 & 2 and husband of petitioner No. 3 worked as Assistant Teacher or Head Master in primary schools run by Zilla Parishad till their retirement. After their retirement in the year 2000 or so, Zilla Parishad initiated action directing recovery of certain amount paid as salary to the petitioner Nos. 1 & 2 and husband of petitioner No. 3 on the ground that certain amounts were paid in excess. The amounts were paid in excess way back in 1968 till 1997 or thereabout. The petitioners filed this petition challenging this order.

2. The question is whether the order directing recovery of excess payment is permissible in law. The Supreme Court in the judgment of State of Punjab Vs. Rafiq

Masih, AIR 2015 SC 696, held that in five kinds of cases such recovery would not be permissible. These five kinds are mentioned in para No.12 of the judgment and we reproduce the same as under :

- 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.

3. The case of the petitioners falls within clause (ii) above. Therefore, the petition is allowed in terms of prayer clauses (A) & (B) of this writ petition. Rule made absolute accordingly.

4. In view of disposal of the writ petition, connected civil application does not survive and stands disposed of.

[V.K. JADHAV, J.]

[A.V. NIRGUDE, J.]