

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

WRIT PETITION NO. 7672 OF 2015

SURYABHAN KISNRAO MAGAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Deshmukh J.S.
AGP for Respondent 1 : Mr. K.M.Suryawanshi
Advocate for Respondents 2,3 : Mr. Tope Sambhaji S.

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.
Dated: August 04, 2015

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PER COURT :-

1. Learned counsel for the petitioner states that, petitioner is agitating only to the extent of recovery claimed from the petitioner. According to the learned counsel for the petitioner, petitioner is working as Health Supervisor Class-3 post. The recovery is claimed vide impugned communication on the ground that excess payment has been made to the petitioner on the basis of erroneous pay fixation. According to the learned counsel, the respondents cannot make recovery even if by mistake excess payment is made. Excess payment is not made on account of mis-representation on the part of the petitioner.

2. Mr. Tope learned counsel for respondents states that, if by mistake excess payment is made, department can recover the said amount.

3. It is not disputed that petitioner is working on class 3 post. Excess payment made since the year 1996 is sought to be

recovered.

4. Considering the fact that recovery is claimed beyond a period of five years prior to the order and also that petitioner is class three employee, the judgment of the Apex Court in case of **State of Punjab and others Vs. Rafiq Masih (White Washer) Etc.** reported in **(2015) 4 Supreme Court Cases 334** would squarely apply.

5. In the result, impugned order to the extent of claiming recovery against the petitioner is quashed and set aside. Writ Petition is disposed of. No costs.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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aaa/-