

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

**WRIT PETITION NO.2043 OF 2015****Santosh S/o Dattatraya More Vs. The State of Maharashtra  
and others.**

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| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's orders |
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Mrs.R.R.Mane, advocate for the petitioner.  
 Mr.S.Y.Mahajan, A.G.P. for the State.  
 Mr.B.B.Bhise, advocate holding for Mr.D.J.Choudhari,  
 advocate for Respondent No.5.

**CORAM : S.V.GANGAPURWALA AND  
K.L.WADANE, JJ.**

**Date : 27.09.2016.**

**PER COURT :**

1. Heard.

2. Mrs.Mane, learned counsel for the petitioner submits that petitioner had joined services as a Lecturer in a Junior College in the year 2004. On 21.4.2010, the petitioner was selected for the post of Assistant Professor of Physics and joined services at Vinayakrao Patil College, Vaijapur. During the said period revised pay fixation was done and the petitioner was paid salary as per the revised pay-scale. Learned counsel submits that in January 2015, order is passed that the pay fixation is wrongly done and recovery is claimed. The learned counsel submits that the recovery as

claimed after four years and eight months of the pay fixation is bad in law and is not permissible. The recovery would result in hardship to the petitioner. Considering the pay fixed, the petitioner has spent the amount. The petitioner has liabilities. As hardship would be caused to the petitioner, it would be inequitable to allow the Respondents to recover the amount. The learned counsel relies on the judgment of the Apex Court in a case of **“State of Punjab and others Vs. Rafiq Masih (White Washer) and others”** reported in **(2015) 4 Supreme Court Cases 334**.

3. The learned A.G.P. submits that because of wrong pay fixation, the excess salary has been paid to the petitioner. If because of error committed in pay fixation, excess salary is paid, the same can be recovered. Learned A.G.P. relies on the judgment of the Apex Court in a case of **“Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others”** reported in **2012 AIR SCW 4742**. The learned A.G.P. further states that the petitioner has given undertaking, thereby agreeing that if the pay fixation is found wrong, the State can recover the excess amount paid.

4. Mrs.Mane, learned counsel submits that the said undertaking is given in the year 2008, when the petitioner was serving with the Junior College. The pay fixation is done in the year 2010 after petitioner was promoted as Assistant Professor in Senior College. As such it can not be said that undertaking was

given with regard to the pay fixation done in the year 2010.

5. We have considered the submissions. The Apex Court in a case of **“State of Punjab and others Vs. Rafiq Masih (White Washer) and others”** referred to supra, has laid down following propositions in case the relief is to be granted against recovery from the employee :

*“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 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.”*

6. The petitioner is not class III or Class IV employee, comes in Class I. The petitioner still has 12 to 14 years of service left. The recovery is from 2010 to 2014. The farthest period of recovery is four years eight months and the same is continuous till the date of the order. It is not the case that the petitioner is required to discharge duties of a higher post of which the salary is paid. Considering the aforesaid conspectus of the matter, it will not be possible to accept the contentions of the learned counsel for the petitioner.

7. Considering that the petitioner is in employment and still has more than 12 to 14 years of service left, we direct the Respondents not to recover the whole amount in lumpsum, however, shall recover the same at the rate of Rs.7,500/- (Rupees seven thousand five hundred) p.m. The said deductions can be made from the salary being paid to the petitioner.

8. The Writ Petition is accordingly disposed of. No costs.

**( K . L . WADANE , J . )**

**( S . V . GANGAPURWALA , J . )**

Dt.27.09.2016.

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