

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1124/2016

(ASHA VILAS DAFALE **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.B. Joshi h/f Shri P.S. Wathore, counsel for the petitioner.
Shri V.P. Gangane, A.G.P. for the R-1 & 2.
Shri J.S. Mokadam, counsel for the R-3.
Shri P.S. Kadam, counsel for the R-4 & 5.

CORAM : SMT.VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : JUNE 24, 2016.

Leave is granted to the petitioner to delete prayer
clause 2, 3 and 4.

Amendment should be carried out forthwith.

JUDGE

JUDGE

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By this writ petition, the petitioner has sought a declaration that the action on the part of the respondents in recovering the excess amount that was mistakenly paid to the petitioner while in service after his retirement is grossly illegal and is liable to be set aside.

Though a prayer for a declaration that the petitioner was entitled to the salary paid to the petitioner while in service is made, the learned counsel for the petitioner states that the petitioner gives up the said prayer and the grievance of the petitioner would stand redressed if this Court quashes and sets aside the order, as far as the recovery is concerned.

Shri Joshi, the learned counsel for the petitioner, states that the respondents are not justified in seeking the recovery of the amount that was wrongfully paid to the petitioner's while in service, after the petitioner has retired from service on attaining the age of superannuation. It is stated by referring to the judgment of the Hon'ble Supreme Court in the case of *State of Punjab & Others Versus Rafiq Masih*, reported in **AIR 2015 SC 696** that an amount mistakenly paid to an employee paid in excess, while in service and without his misrepresentation, cannot be recovered from the employee after his retirement. It is stated that it is clearly held by

the Hon'ble Supreme Court in paragraph 12 of the said judgment that recovery from retired employees, or employees who are due to retire within one year of the order of recovery would be bad in law.

The learned counsel for the respondents do not dispute the position of law as laid down by the Hon'ble Supreme Court in the judgment reported in **AIR 2015 SC 696** (*State of Punjab Versus Rafiq Masih*). It is stated that an appropriate order may be passed in the circumstances of the case.

Hence, we allow the writ petition. It is hereby declared that the respondents would not be entitled to recover the excess amount paid to the petitioner towards salary and other benefits while the petitioner was in service, after his retirement. The respondents would, therefore, not be entitled to recover excess amount paid to the petitioner, in view of the law laid down by the Hon'ble Supreme Court in the case of *State of Punjab Versus Rafiq Masih*, reported in **AIR 2015 SC 696**.

Order accordingly. No costs.

JUDGE

JUDGE

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