

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

WRIT PETITION NO. 2470 OF 2016

Rajani Sunil Hedau ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

WITH

WRIT PETITION NO. 2471 OF 2016

Shobha Ashok Khadke ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

WITH

WRIT PETITION NO. 2481 OF 2016

Liladhar Laxman Patil ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

WITH

WRIT PETITION NO. 2482 OF 2016

Ashalata Murlidhar Marathe ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

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Mr. A.G. Talhar, Advocate for petitioners.

Mr. M.B. Bharaswadkar, A.G.P. for Respondent No.1.

Mrs. C.R. Kutti - Choudhary, Advocate for Respondent Nos. 2 and 3.

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**CORAM : S.V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.
DATED : 27th MARCH, 2017**

ORDER :

1. Mr. Talhar, learned Counsel for the petitioners states that the petitioners in all these petitions were working as Health Assistant (Female). They were given house rent allowance for the years 2006-07 and 2007-08. These petitioners have occupied Class-III posts. In the year 2014, recovery was claimed against these petitioners on the ground that house rent allowance paid to the petitioners for the years 2006-07 and 2007-08 was erroneous. Learned Counsel submits that the payment of house rent allowance was approved by the Zilla Parishad and thereafter only it was paid. Recovery is sought to be claimed after seven years. Learned Counsel however submits that the petitioners in Writ Petition Nos. 2470 of 2016 and 2481 of 2016 have already retired.

2. The learned Counsel relies on the judgment of the Apex Court in the case reported as **2015 (1) All M.R. 957 (State of Punjab Vs. Rafiq Masih [White Washer] Etc.)** to submit that even erroneously if excess amount has been paid, then the same cannot be recovered from the employee who has retired or who is on the verge of retirement.

3. Mrs. Kutti, learned Counsel for Respondent Nos. 2 and 3 submits that the petitioners were erroneously paid the house rent for the years 2006-07 and 2007-08. They were not entitled for payment of house rent allowance. In view of the fact that wrong payment was made to the petitioners, the respondents are entitled to recover the same. It was on the erroneous assumption the wrong payment was made to the petitioners though they were not entitled to the house rent allowance. Such mistake was noticed in the audit report. The recovery is rightly claimed.

4. We asked learned Counsel for the respondent as to whether any undertaking was given by the petitioners when house rent allowance was paid to them. The answer was in the negative.

5. The petitioners are occupying the Class-III posts. The petitioners in Writ Petition Nos. 2470 of 2016 and 2481 of 2016 have already retired on attaining the age of superannuation on 31st July, 2016 and 30th September, 2016 respectively. The recovery is claimed after five years. Considering all the aforesaid aspects of the matter, the cases would be covered by the judgment of the Apex Court in ***State of Punjab Vs. Rafiq Masih [White Washer] Etc.*** (cited supra).

6. In view of the above, the writ petitions are allowed. The impugned recovery against the petitioners on account of payment of house rent allowance is quashed and set aside. If any amount is recovered by the respondents from the petitioners pursuant to impugned communication, the same shall be repaid to the petitioners within three months from today. No order as to costs.

(SANGITRAO S. PATIL, J.) (S.V. GANGAPURWALA, J.)
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