

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

CIVIL APPLICATION NO.13853 OF 2017

IN

RAST NO.34463 OF 2017

IN

WRIT PETITION NO. 1941 OF 2016

The Chief Executive Officer & others ...Applicants

Versus

The State of Maharashtra and another ...Respondents

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Mr P.R. Nangare, advocate for applicants

Mr. V.S. Badakh, Asstt.Govt.Pleader for respondent No.1

Mr. V.B. Patil & R.I. Wakade, advocates for respondent No.2

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CORAM : T.V. Nalawade &

Sangitrao S. Patil, JJ.

DATE : December, 04, 2017

PER COURT :

The application is filed for condonation of delay of 216 days caused in filing review application, seeking review of the decision given by this court in Writ Petition No.1941 of 2016.

2. Heard learned counsel for the applicants.

3. For condonation of delay, the applicants are required to show not only sufficient cause but they have also to show that they have some arguable case.

4. In the writ petition, the action of respondents therein Writ Petition i.e. present applicants for recovery of the amount paid in excess by way of salary was challenged. It was due to wrong pay fixation of the employee, who was a class-III employee. This court considered rival contentions and held that it was not because of any fault on the part of the employee and she had not played any fraud in pay fixation and so after retirement, the amount which was allegedly paid in excess cannot be recovered from her. This court had referred the case reported as **(2015)4 SCC 334 (Punjab V. Rafiq Masih)**.

5. Learned counsel produced on record the copy of judgment delivered by the Hon'ble Apex Court in the case of **High Court of Punjab & Haryana and others Vs. Jagdev Singh** in **C.A. No.3500 of 2006** on 29-07-2016. Learned counsel submitted that the case of **Punjab Vs. Rafiq Masih** (supra) is considered by the Apex Court and the Apex Court held that as an undertaking was given by the employee to return the amount, if any, paid in excess due to mistake committed in pay fixation, the employee was bound to return the amount. The facts of the cited judgment produced to show that the employee was a judicial officer, who was compulsorily retired from service and these circumstances were considered

by the Apex Court. When this court decided the writ petition, the argument advanced for present applicants regarding giving of such undertaking was considered by this court and after that the decision has been given by this court. Further, the present employee was a class-III employee. Thus, the application for review cannot be considered by this court. There is no arguable case for the applicants. Further, this court held that there is no sufficient cause shown for delay of 216 days caused in view of the contentions made in this application.

6. Therefore, the application stands rejected.

[SANGITRAO S. PATIL, J.] [T.V. NALAWADE, J.]

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