

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

936 WRIT PETITION NO. 2258 OF 2014
WITH WP/2280/2014

DYANOBA NAMDEORAO NEVHAL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr.Bhumkar R.P. And Mr. V.R.
Bhumkar

AGP for Respondent No. 1 : Mr. P.N. Kutti.

Advocate for respondent nos. 2 to 4 : Mrs.Palve (Ghule
Renuka B.

...

**CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.**

DATE : JULY 19, 2018

O R D E R :

Mr. Bhumkar, learned counsel for the petitioners submits that the petitioners would limit their petition only to the extent of recovery claim.

2. According to the learned counsel, the benefit of time bound promotional pay scale was given to the petitioners in the year 2008. Under the impugned order, the same is sought to be recovered. The

impugned order is passed without notice to the respondents and without hearing to the petitioners. The learned counsel submits that the petitioners are Class III employees and such a recovery cannot be claimed. The petitioners have not misrepresented. After completion of 12 years service, so also 45 years of age and when the petitioners were entitled for exemption the benefit has been given.

3. Learned counsel relies on the judgment of the Apex Court in the case of **State of Punjab and others vs Rafiq Masih**, reported in 2015 (4) SCC 334.

4. Mrs. Palve, learned counsel for the respondents submits that wrongly the benefit of time bound promotional pay scale was granted to the petitioners and they were not entitled for the same. In view of that, when the mistake came to the light, the impugned order is rightly passed.

5. We have considered the submissions.

6. It is submitted that only 2 years service has remained of the petitioners and they are on the verge of retirement. It is also not disputed that after 4 to 5 years recovery is claimed. We are not entering into the legality of the pay scales, as the same is not subject matter of the petition. The petitioners have restricted the petition to the extent of recovery only.

7. It appears that the respondents are granted the benefit of time bound promotional pay scale. The same was not on the representation of the petitioners. The petitioners are Class III employees on the verge of retirement. Naturally hardship would be caused if the recovery is made. In view of that, the principles laid down by the Apex Court in the case of **State of Punjab and others vs Rafiq Masih** (supra) would squarely apply to the present case.

8. In view of above, the impugned order to the extent of recovery is quashed and set aside. In case if any recovery is made pursuant to the impugned order the same be refunded within a period of three months.

9. Writ petition is disposed of. No costs.

[SUNIL K.KOTWAL, J.]

[S.V.GANGAPURWALA, J.]

mahajansb/