IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4174 OF 2018

Ramrao S/o Harichand Rathod
Age : 60 years, Occ : Pensioner,
R/o. Gokunda, Tq. Kinwat
Dist. Nanded. ..Petitioner

Versus

(1) The State of Maharashtra,
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

(2) The Chief Executive Officer,
Zilla Parishad Nanded.

(3) The Medical Officer,
Primary Health Centre,
Bodhadi (BK), Tq. Kinwat,
Dist. Nanded. ..Respondents

WITH
WRIT PETITION NO.4175 OF 2018

Ajima Begum W/o Shaikh Jalil
Age: 44 years, Occ. HH,
R/o. Gokunda, Tq. Kinwat4
Dist. Nanded. ..Petitioner

Versus

(1) The State of Maharashtra,
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

(2) The Chief Executive Officer,
Zilla Parishad Nanded,
Having office at CIDCO Colony Nanded,
Tq and Dist. Nanded.

(3) The Block Development Officer
Panchayat Samiti Kinwat,
Tq. Kinwat, Dist. Nanded.

(4) Senior Accounts Officer,
Zilla Parishad, Nanded,
Having office at CIDCO Colony, Nanded,
Tq. and Dist. Nanded. ..Respondents

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Mr. Girish N. Kulkarni (Mardikar), Advocate for the Petitioners in both Writ Petitions.
Mr. A. V. Deshmukh, AGP for Respondent-State.
Mr. S. B. Pulkundwar, Advocate for Respondent Nos.2 and 3 in WP/4174/2018 and for Respondent Nos.2 to 4 in WP/4175/2018.

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CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.

DATED : 01st AUGUST, 2018.

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.):-

1. Rule. Rule returnable forthwith. By consent of parties, taken up for final hearing at admission stage.

2. In all these matters, the petitioners assail the orders claiming recovery from them on account of wrong pay fixation.

3. Mr. Kulkarni, the learned counsel for petitioners, strenuously contends that recovery in all these matters is beyond five (05) years. Some of the petitioners have retired and some of the petitioners are on the verge of retirement. The learned counsel submits that in such cases, recovery cannot be claimed against the petitioners

even assuming that the pay fixation was wrong. According to the learned counsel, the pay fixation was not on account of any misrepresentation on the part of the petitioners. In such cases, recovery cannot be claimed. The counsel for the petitioners placed reliance on the judgment of the Apex Court in a case of **State of Punjab and others v/s. Rafiq Masih (White Washer)** dated 18.12.2014.

4. The learned AGP and Mr. Pulkundwar, learned counsel for Zilla Parishad submit that wrong pay fixation was done and wrongly excess payment has been paid to the petitioners. As such, respondents have every right to recover the same.

5. It is not disputed that in all these matters some of the petitioners have retired and some of the petitioners are on the verge of retirement. It is also not disputed that recovery claimed is beyond five (5) years. The Apex Court, in a case of State of Punjab (supra) in paragraph no. 12, has observed as under:

> *"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein 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 case of the present petitioners would be squarely covered by the judgment in the case of State of Punjab (Supra). Some of the petitioners have retired and some are on the verge of retirement. The recovery also is for a period beyond 5 years, as such the present case is covered by eventualities as laid down in paragraph nos. 12(ii) and (iii) of the judgment of Apex Court in

the case of State of Punjab (referred supra).

7. In the light of the above, the writ petitions are allowed. The impugned orders claiming recovery against the petitioners are quashed and set aside. In case the respondents, pursuant to the said orders of recovery, have recovered some amount from the petitioners, then the respondents shall refund the said amount to the petitioners expeditiously and preferably within a period of six (06) months.

8. Rule is accordingly made absolute. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/August-18