

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

WRIT PETITION NO. 6953 OF 2016

Smt.Kalabai Shantaram Chaudhari .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 8355 OF 2016**

Chaitram s/o. Baliram Bhadane & Ors. .. Petitioners

Versus

The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 9298 OF 2016**

Ashok s/o. Hilal Wagh & Anr. .. Petitioners

Versus

The State of Maharashtra & Ors. .. Respondents

Smt.Pratibha Bharad, Advocate for the petitioners.

Mr. V.S. Badakh, AGP for respondent/State.

Mr. Rahul S. Pawar, Advocate for R-3,5,6 & 7.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 21.08.2018

P.C. :-

1. Learned Counsel for the petitioners submits that these petitioners on the date of retirement were working as Extension Officers/*Kendra Pramukh*. These petitioners retired during the period from 2010 to 2013. In the year 2016 recovery is sought to be claimed from the petitioners on the ground of erroneous pay-fixation. The learned Counsel submits that the petitioners have never misrepresented about pay-scale applicable to them. The respondent-authorities had fixed pay-scale after following proper procedure. All the petitioners were working as class-III employees and after lapse of 6-8 years upon their retirement, recovery is claimed on the ground of erroneous pay-fixation. Hardship would be caused to the petitioners. 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.**

2. Mr.Pawar, learned Counsel submits that by mistake erroneous pay-fixation was done. The pay-scales

which the petitioners were not entitled to, were fixed and the salary was paid as per the erroneous pay-fixation. Learned Advocate submits that if the petitioners are allowed to retain said amount, it would amount to unjust enrichment. The respondents have every right to recover the said amount and as such orders are passed.

3. It is not disputed that all these petitioners were working on Class-III post on the date of retirement. Pay-scale was fixed to them much prior to retirement and upon lapse of 6-8 years of retirement, recovery is being claimed on account of wrong pay-fixation.

4. The Apex Court in the case of Rafiq (Supra), has laid down following principles :-

"18. 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 here-in-above, we may, as a ready reference,

summarize the following few situations, wherein recoveries by the employers, would be impermissible in law :

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D Service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

5. The petitioners were Class-III employees on the date of retirement. The recovery is claimed more than five years after the pay-fixation was given to the petitioners. The petitioners are all retired employees.

Hardship would be caused to the petitioners, if recovery is claimed at this stage. It would be inequitable to allow recovery. The petitioners have not misrepresented with regard to their pay-scale. The principles laid down by the Apex Court in the case of Rafiq (Supra) enumerated above are fulfilled.

6. In the light of above, the impugned orders asking recovery from the petitioners is quashed and set aside. If some amount has been recovered, same may be refunded within a period of three months.

7. The writ petition is allowed in above terms. No costs.

[S.M.GAVHANE, J.]

[S.V.GANGAPURWALA, J.]