

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

WRIT PETITION NO.13188 OF 2017

Mandakini Ganpat Mule,
died, through L.Rs. Arun
Eknathrao Joshi

..Petitioner

Versus

The State of Maharashtra and ors.

..Respondents

Mr Prakashsing B. Patil, Advocate for petitioner
Mrs A.V. Gondhalekar, A.G.P. for respondent no.1
Mr S.S.Deshmukh, Advocate for respondents no.2, 3 and 5

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVALA, JJ**

DATE : 23rd February 2018

PER COURT

1. We have heard the learned Counsel for the petitioner, learned A.G.P. for State and learned Counsel for respondents no.2, 3 and 5.
2. The notice of recovery was issued to the wife of the petitioner on the ground that the increment was wrongly given to the deceased wife of the petitioner. The wife of the petitioner retired on 31.12.2011. The notice was issued for recovery of Rs.81,577/- to the wife of the petitioner on 26.3.2012. Subsequently, wife of the petitioner died on 13.8.2015. Learned Counsel submits that the increment was granted to the wife of the petitioner, as she was selected as the best teacher and two increments were given, but no monetary benefits were given to her in her lifetime.
3. Learned Counsel for respondents submits that increment was wrongly given. The wife of the petitioner sought voluntary retirement. The excess salary wrongly paid was recovered and the

respondents-authorities have every right to recover the excess amount paid.

4. The wife of the petitioner, it appears that was Class-III employee. Even, the petitioner who is the husband of the deceased is a retired person aged about 68 years. Even assuming that some wrong pay fixation was done, however, the same is not attributable to the petitioner or the wife of the petitioner. The wife of the petitioner is dead. The petitioner is also retired person, aged about 68 years. Claiming recovery from the petitioner at this stage would certainly amount to hardship. The case of the petitioner would be covered under the principles laid down by the Apex Court in the case of **State of Punjab and ors., Vs. Rafiq Masih (White Washer), reported in (2015) 4 SCC 334**. The Apex Court in para 18 of the judgment held as under:

“18.....

(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, whether 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 case of the petitioner would be covered under grounds no. (II), (III) and (V).
6. In light of the above, the action to the extent of recovery claimed is quashed and set aside.
7. The respondents should refund the said amount to the petitioner within a period of three months from today.
8. Writ Petition is accordingly disposed of. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

vvr