

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

**170 WRIT PETITION NO.2465 OF 2019
WITH WP/2473/2019 WITH WP/2474/2019**

RAMESH BABURAO NAGPURE

..PETITIONER

VERSUS

THE ZILLA PARISHAD JALGAON THROUGH ITS CHIEF
EXECUTIVE OFFICER AND OTHERS ..RESPONDENTS

...

Mr. Vijay B. Patil, Advocate for the Petitioner.
Mrs. G. L. Deshpande, AGP for Respondents-State.
Mr. Maheshkumar S. Sonawane, Advocate for
Respondent Nos.1 to 3.

...

WITH

**172 WRIT PETITION NO.2690 OF 2019
WITH WP/2710/2019 WITH WP/2733/2019 WITH
WP/2783/2019 WITH WP/2785/2019 WITH WP/2786/2019
WITH WP/2794/2019 WITH WP/2795/2019 WITH
WP/2796/2019**

MINAKSHI PANDHARINATH PATIL

..PETITIONERS

VERSUS

THE ZILLA PARISHAD JALGAON THROUGH CHIEF EXECUTIVE
OFFICER AND ANOTHER ..RESPONDENTS

...

Mr. Vijay B. Patil, Advocate for the Petitioners.
Mr. S. P. Tiwari, AGP for Respondents-State.
Mr. Maheshkumar S. Sonawane, Advocate for
Respondent Nos.1 to 2.

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**CORAM : S. V. GANGAPURWALA &
ANIL S. KILOR, JJ.**

DATED : 09th SEPTEMBER, 2019.

PER COURT:-

1. The petitions are filed to the extent of recovery claimed.

2. Mr. Patil, learned counsel for petitioners submits that petitioners have retired from service. From the retiral benefits, recovery is claimed by respondent no.2. If recovery is claimed, hardship would be caused to petitioners. The petitioners are not responsible for wrong pay fixation. The learned counsel for the petitioner relies on the judgment of the Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** reported in **2015 (4) SCC 334**.

3. Mr. Sonawane, learned counsel submits that petitioners had given an undertaking that they will refund the excess amount paid on account of wrong pay fixation.

4. It is not disputed that petitioners retired from service. The petitioners at the time of retirement were working as Class III employees. The undertaking according to respondents is given in the year 2009 and the benefit was granted to petitioners in the year 2013. In view of that, the undertaking would be of no avail.

5. The recovery claimed is beyond five years of the benefit given.

6. The Apex Court in the case of **State of Punjab Vs. Rafiq Masih** (supra) has laid down following parameters for not allowing recovery on account of wrong pay fixation:-

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

(ii) Recovery from the retired employees, or 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.

7. All the parameters laid down by the Apex Court in case of **State of Punjab Vs. Rafiq Masih** (supra) are attracted in the present case.

8. In light of the above, impugned orders to the extent of recovery are quashed and set aside.

9. Writ Petitions are disposed of. No costs.

10. In case, recovery is made by respondents, the same shall be refunded to petitioners within a period of four (04) months.

(ANIL S. KILOR)
JUDGE

(S. V. GANGAPURWALA)
JUDGE