

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
955 WRIT PETITION NO.5045 OF 2018**

Shri. Sunil S/o Hanumantrao Rakade,
Age:- 47 years, Occ:- Service,
R/o at post Gondegaon,
Soyagaon, Tq. Soyagaon,
Dist. Aurangabad

..PETITIONER

VERSUS

1. The State of Maharashtra
Through it's Secretary,
Rural Development & Water Conservation
Department, Mantralaya, Mumbai.
2. Chief Executive Officer,
Zilla Parishad, Aurangabad.
3. Block Development Officer Class-1
Panchayat Sammittee Soygaon,
Tq. Soygaon, Dist. Aurangabad.
4. Chief Account and Finance Officer,
Zilla Parishad, Aurangabad. ..RESPONDENTS

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Mr. Bhagwan V. Thombre, Advocate for the
Petitioner.

Mr. S. B. Yawalkar, AGP for Respondents-State.

Mr. S. M. Ganachari, Advocate for Respondent Nos.2
to 4.

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**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATED : 21st AUGUST, 2019.

ORAL JUDGMENT (Per: S. V. Gangapurwala, J.):-

1. Rule. Rule made returnable forthwith.
With the consent of the parties, matter is taken up
for final hearing.

2. The petitioner is assailing recovery pursuant to the impugned order.

3. Mr. Thombre, learned counsel for the petitioner submits that the petitioner had never misrepresented in respect of the pay fixation. Respondents on their own fixed the pay scale of the petitioner. The benefit of the pay scale fixed by the respondents was granted to the petitioner from 01.01.2006 to 31.03.2008 and the alleged excess payment is sought to be recovered under order dated 04.01.2018. According to the learned counsel after a long slumber, respondents cannot recover the amount. The same would cause hardship to the petitioner. The learned counsel submits that the petitioner is working on Class-III post. The learned counsel relies on the judgment of the Apex Court in case of **State Of Punjab & Ors vs Rafiq Masih (White Washer)** reported in (2015) 4 SCC 334.

4. The learned counsel for respondent nos.2 to 4 submits that, the previous pay scale was wrongly given to the petitioner. On 01.10.2008 two excess pay scale were given. As per circular dated 03.07.2009, the recovery can be claimed by the respondents. The respondents are entitled to recover the excess amount wrongly paid to the petitioner.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. The learned counsel for respondents does not dispute that the petitioner is working on Class-III post. The recovery is claimed after 10 years.

7. It is also not disputed that the pay fixation has been wrongly done by respondents on their own accord. The petitioner has never misrepresented at any point of time. It would be inequitable if recovery is claimed after lapse of 10 years. All parameters laid down in a case of **State Of Punjab & Ors vs Rafiq Masih (White Washer)** (supra) are attracted.

8. In the light of above, the impugned order to the extent of claiming recovery is quashed and set aside.

9. Rule is made absolute in above terms. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE