

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

WRIT PETITION NO.4366 OF 2019

Prashant Rameshsing Pardeshi
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4367 OF 2019

Ghanshyam Vishnu Rane
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4368 OF 2019

Bhagwat Sopan Yeole
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4369 OF 2019

Vikas Bhaskar Patil
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4370 OF 2019

Uttam Kaluram Bhadange
Versus

Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4371 OF 2019

Deelipkumar Balu Chalke
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4372 OF 2019

Vijay Harichandra Hire
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4373 OF 2019

Jaywant Krushnarao Ghadge
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4374 OF 2019

Harshad Lalchand Jain
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4375 OF 2019

Dnyaneshwar Khandu Chikhale
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4376 OF 2019

Parag Ratnakar Joshi
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4377 OF 2019

Prakash Vitthal Shivsharan
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4378 OF 2019

Anil Trimbak Pophale
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4379 OF 2019

Laxman Mahadeo Suryawanshi
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4380 OF 2019

Gorkashnath Haribhau Shinde
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4381 OF 2019

Mahendra Bhika Wagh
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4382 OF 2019

Subhash Sukdeo Chaudhari
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

WITH

WRIT PETITION NO.4383 OF 2019

Narayan Rakhmaji Avhad Petitioner
Versus
Shri Saibaba Sansthan Trust, Shirdi
and another

...

Advocate for Petitioners: Mr. P.V. Balkhande h/f. Mr. Shejwal Avinash K.
Advocate for Respondent Nos. 1 and 2 : Mr. Bhavar Nitin R.

...

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

DATE : 16/08/2019

PER COURT :

1. We have heard the learned counsel for the petitioners. The petitioners are challenging the order dated 10.01.2019, directing recovery of excess amount of salary allowances paid to the petitioners.

2. We have heard the learned counsel for the petitioners. 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**. The learned counsel further submits that the petitioners are working as Class-III and Class-IV employees. The recovery is claimed five years prior to the date of the order. The learned counsel submits that the ACPs benefit and the revision of pay scale is not on account of any misrepresentation on the part of the petitioners but it was a decision of the respondent itself.

3. Mr. Bhavar, the learned counsel submits that in 2009, petitioners had given an undertaking that they will refund the excess amount paid on account of wrong pay fixation. In view of the undertaking given by them, the petitioners are stopped now from challenging the recovery. The learned counsel relies on the judgment of the Apex Court in case of **Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others** reported in **(2012) 8 Supreme**

Court Cases 417. According to the learned counsel that mistakenly the pay fixation in respect of petitioners was made as per provisions contained in Rule 11 (1) (a) of the Maharashtra Civil Services (Pay) Rules, 1981. In fact, the pay fixation was to be made as per Rule 11(2) of the Maharashtra Civil Services (Pay) Rules, 1981.

4. We have considered the submissions. The present petition is restricted to the extent of recovery claimed by the respondent on account of erroneously granting ACPs benefits and wrong pay fixation.

5. It is not disputed that all these petitioners are Class-III and Class-IV employees. The benefit was granted to the petitioners on 26.02.2013. The said benefit is withdrawn under order dated 10.01.2019 i.e. after five years of the benefit granted. If the recovery is claimed, hardship would be caused to the petitioners. The Apex Court in the case of State of Punjab Vs. Rafiq Masih 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.

6. It would appear that the ACPs benefit and the pay fixation and revision in pay fixation was made by the respondent as per their understanding. The petitioners never misrepresented or played fraud upon the respondents. The respondent accorded the benefit to the petitioner as per the Government Resolution dated 01.04.2010 and 26.02.2013. Inadvertently, the respondents fixed the pay as per Rule 11 (1) (a) of the Maharashtra Civil Services (Pay) Rules, 1981 instead of Rule 11 (2) of the Maharashtra Civil Services (Pay) Rules, 1981. After realizing the same, the respondents under order dated 10.01.2019 have revised the pay scale so also have initiated recovery. Probably relying upon the undertaking given in the year 2009.

7. The undertaking was already taken in the year 2009, whereas, the revision of pay fixation and the benefit of ACPs was given in the year 2013. The said undertaking would not be of any avail to

the respondents.

8. Even otherwise, the parameters as are detailed in the judgment of the Apex Court in case of State of Punjab Vs Rafiq Masih (supra) rendered are fulfilled.

9. In light of the above, the impugned order to the extent of recovery claimed from the petitioners is quashed and set aside.

10. Rule is accordingly made absolute in above terms. Writ petition is disposed of.

(MANGESH S. PATIL, J.)

(S. V. GANGAPURWALA, J.)

habeeb