

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

WRIT PETITION NO. 4519 OF 2017

Siddharth Lakhuji More,
Age- 59 years, Occu-Retired/pensioner
R/o. Plot No. 46/2, Girija Colony, Jamner,
Tq. Jamner, Dist. Jalgaon

...PETITIONER

VERSUS

1. The Zilla Parishad, Jalgaon,
Through its
Chief Executive Officer

...RESPONDENTS

2. The Education Officer (Primary),
Zilla Parishad, Jalgaon

Mr. Vijay B. Patil, Advocate for the petitioner
Mr. Hemraj P. Kshirsagar, Advocate for respondents No. 1 and 2

**CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.**

DATE : 07-10-2019

ORAL JUDGMENT [PER: S.M. GAVHANE, J.]

. Rule. Rule made returnable forthwith. Heard the petition finally with the consent of the parties.

2. By this petition under Article 226 of the Constitution of India the petitioner-pensioner has prayed to issue writ or order to quash and set aside order passed by respondent No. 2 Education Officer (Primary) dated 30-05-2016 to the extent it directs recovery of Rs.86,708/- (Rupees Eighty Six Thousand Seven Hundred and

Eight Only) from him and to direct the respondents to refund the amount recovered from his retiral benefits.

3. According to the petitioner on 05-03-1984 he was appointed as Primary Teacher in the school at Galan, Tq. Pachora, Dist. Jalgaon. He rendered unblemished service as Primary Teacher. Considering his qualification he was promoted as Assistant Teacher. His service as Assistant Teacher was without any adverse report or stigma. Petitioner has retired on attaining the superannuation age. Under order dated 30-05-2016 respondent No. 2 had released certain retiral benefits and had also deducted and recovered amount of Rs.86,708/- from him as excess payment made to him without giving him an opportunity, notice and without any reason. Therefore, the petitioner claims reliefs referred earlier by this petition.

4. The respondents have not filed reply.

5. We have heard the counsel for the parties. Mr. V.B. Patil, learned counsel for the petitioner submitted that the petitioner had rendered unblemished service from appointment to the date of superannuation. He was also promoted. He had rendered service as Assistant Teacher without any adverse report or stigma. The learned counsel submits that petitioner was a class-III employee. After retirement, alleged excess payment made to him cannot be recovered from him and the same cannot be deducted from the amount of retiral benefits payable to him. Therefore, aforesaid

amount be directed to be refunded to him. To support his submission learned counsel has relied upon the decision of the division bench of this court dated 11-09-2019 in a group of writ petitions bearing No. 11190 of 2019 [*Shaikh Humayun Shaikh Nayyar Vs The Zilla Parishad, Jalgaon and another*] and connected writ petitions and particularly puts emphasis on paragraphs No. 4, 5 and 6 which read thus:

“4. Pay fixation was done in the year 2013. The case of the petitioners is covered by the judgment of Apex Court of State of Punjab Vs Rafiq Masih (White washer) (supra), wherein the Apex Court laid down the following parameters.

(I) Recovery from employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service).

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

(III) Recovery from 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 employees, 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. All parameters laid down in the judgment of State of Punjab Vs Rafiq Masih (supra) are fulfilled. In the light of the above, orders to the extent of recovery are quashed and set aside. The respondents shall return the amount recovered from the petitioners within a period of four months from today.

6. Writ petitions are disposed of accordingly. No costs.

6. In the present case considering the undisputed facts referred earlier and that the petitioner was class-III employee and had retired on attaining age of superannuation, amount considered to have been paid in excess to him was recovered from the petitioner-pensioner deducting the same from his retiral benefits, by applying the decision of this Court referred to above and decision of Apex Court in the case of *State of Punjab Vs Rafiq Masih* referred in the said decision, it would surface that no directions could have been given by respondent No. 2 to recover the amount from the petitioner. Therefore, the impugned order to the extent it deducts and recovers amount of Rs. 86,708/- from the petitioner is not sustainable and is liable to be set aside. As such, we hold that

the petitioner is entitled to reliefs claimed.

7. In view of the above the impugned order to the extent it deducts and recovers amount of Rs. 86,708/- from the retiral benefits of petitioner is set aside and respondents are directed to refund the amount of Rs. 86,708/- to the petitioner within a period of two months from the date of receipt of writ of order of this court. Rule is made absolute in aforesaid terms. Petition is accordingly allowed. No costs.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]