

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

25 WRIT PETITION NO.6553 OF 2018

BALASAHEB LAXMAN WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner: Mr. Sakolkar Vijay G. And H B
Nandagavale

AGP for Respondents State: Mr. A. B. Chate

Advocate for Respondents 3 to 5 : Mr. Ingole R.K.

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

DATE : 19th March, 2019

PER COURT :

1. The petitioner assails the order dated 06.02.2018. By virtue of the said order, repay fixation has been done and recovery is claimed against the petitioner.

2. Mr. Ingole, learned Advocate for respondent Nos. 3 to 5 submits that wrong pay fixation was done. Payment of promotional pay scale was wrongly granted to the petitioner. The petitioner cannot be unjustly enriched on account of the wrong pay fixation.

3. Perusal of the impugned order, it transpires that repay fixation has been done without notice to

the petitioner and without hearing the petitioner. If any order adverse to a person is passed, then said person is required to be given opportunity to put-forth his say. As the impugned order is passed without notice to the petitioner and without hearing the petitioner, the impugned order is quashed and set aside.

4. The respondents, if they want to re-fix the pay scale of the petitioner, then they should issue notice to the petitioner, call for his say and then take decision upon re-pay fixation.

5. As far as recovery is concerned, the petitioner is Class-3 employee. Recovery is claimed from the petitioner when the petitioner was at the verge of retirement. The same would cause hardship to the petitioner. The parameters as laid down in the judgment of the Apex Court in the case of **State of Punjab Vs. Rafiq Masih (White Washer)**, reported in **2015 (4) SCC 334** would be attracted.

6. Considering the above, if the respondents come to the conclusion that wrong pay fixation was

done in case of the petitioner, recovery may not be made from the petitioner.

7. With the above observations, writ Petition is disposed of. No costs

(A. M.DHAVAL, J.)

(S.V.GANGAPURWALA, J.)

JPC