

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

132 WRIT PETITION NO.11148 OF 2019

**AYYUBKHAN HABIB KHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioner : Kulkarni Girish N. (mardikar)

AGP for Respondents: S.G.Karlekar

Adv. Pulkundwar Santosh B. For R No 2 To 5

...

136 WRIT PETITION NO.11611 OF 2019

**SUDAM RANBA BODKHE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioner : Kulkarni Girish N. (mardikar)

AGP for Respondents: S.B.Narwade

Adv.Pulkundwar Santosh B. For R No 2 To 4

...

138 WRIT PETITION NO.11628 OF 2019

**MUKUND RUPSING JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioner : Kulkarni Girish N. (mardikar)

AGP for Respondents: Mrs.G.L.Deshpande

Adv.Pulkundwar Santosh B. For R No 2 To 4

...

**143 WRIT PETITION NO.11690 OF 2019
WITH WP/11692/2019 WITH WP/11729/2019**

**SAHEBRAO KASHIBA DHUMAL
VERSUS
THE STATE OF MAHRASHTRA AND OTHERS**

...
Advocate for Petitioner : Kulkarni Girish N. (mardikar)
AGP for Respondents: PS.Patil
Adv.Punkundwar S.G. for R.2 to 4.

...

**148 WRIT PETITION NO.12369 OF 2019
WITH WP/12373/2019 WITH WP/12380/2019 WITH WP/12394/2019**

**ANSARI INAYAT ALI AMJAD ALI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Kulkarni Girish N. (mardikar)
AGP for Respondents: Mrs.G.L.Deshpande
Adv.Pulkundwar Santosh B. For R No. 2 And 3

...

**CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL,JJ.**
DATE : 11.11.2019

PC. :-

The present petitions are filed challenging recovery claimed from the pensionary benefits of the petitioners and further seeking refund of the amount recovered.

2] Mr.Kulkarni, learned advocate for the petitioners submits that from the retiral benefits of the petitioners the respondents have recovered the amount. The petitioners at the relevant time and at the time of retirement were working as Class-III and Class-IV employees of the Zilla Parishad. The recovery is claimed on the ground that in the year 2003-2004 wrong pay fixation was

done. The learned counsel relied on the judgment of the Apex Court in the case of State of Punjab and Ors. Etc. V/s Rafiq Masih (WhiteWasher) Etc..reported in 2015 (IV) S.C.C. 334.

3] Mr.Pulkundwar, learned Advocate for Zilla Parishad submits that in the year 2003-2004 wrong pay fixation was done by the State and excess amount was paid to the petitioners. As excess amount is paid to the petitioners, under Rule 134-A of the Pension Rules, the respondents are entitled to claim recovery. The order of recovery is rightly passed and revised pay fixation is done.

4] We have considered the submissions.

5] There is no dispute that the petitioners in all these petitions are either Class-III or Class-IV employees. The recovery claimed is for a period of 5 years prior to the order of recovery. It would be inequitable and hardship would be caused to petitioners if recovery is made from the pensionary benefits. The Apex Court in the case of Rafiq (supra) has laid down following parameters:

“12] It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

- 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 5 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 out way the equitable balance of the employer's right to recover. “

6] All the parameters laid down by the Apex Court in the case of Rafiq (supra) are attracted in the present cases. In light of above, order passed by the respondents to the extent of recovery is quashed and set aside. If recovery is made, respondents shall refund the amount of recovery to the petitioners preferably within 4 months.

7] Writ Petitions are accordingly allowed to that extent. No costs.

[MANGESH S. PATIL, J.]

[S.V.GANGAPURWALA,J.]