

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

WRIT PETITION NO. 11179 OF 2018

Aruna Vithalrao Udate .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 11181 OF 2018**

Chintamani Manikrao Kokare .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 11182 OF 2018**

Jagannath Mahadayya Sakole .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 11183 OF 2018**

Rajabhau Haribhau Yadav .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 11184 OF 2018**

Najukma Maulana Mohd. Usmansab .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

WITH
WRIT PETITION NO. 11185 OF 2018

Suresh Karbasappa Kalshetti .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

WITH
WRIT PETITION NO. 11917 OF 2018

Babasaheb Daultrao Sarwade .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

Shri Annasaheb S. Kadam, Advocate for the Petitioner in all above matters.

Ms. P. V. Diggikar, A.G.P. for the Respondent No. 1 in all matters.

Shri Sachin S. Deshmukh, Advocate for Respondent/Zilla Parishad in all matters.

WITH
WRIT PETITION NO. 7862 OF 2018

Sunil Mohanrao Thete .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

Shri V. P. Golewar, Advocate for the Petitioner.

Ms. P. V. Diggikar, A.G.P. for the Respondent No. 1.

Shri Sachin S. Deshmukh, Advocate for the Respondent No. 2.

CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.

DATE : 30TH JANUARY, 2019.

FINAL ORDER :

. Mr. Kadam and Mr. Golewar, the learned counsel for respective petitioners submit that, they are assailing impugned action of the respondents to the extent of recovery claimed.

2. According to them on account of re-pay fixation done by respondents recovery is claimed by the respondents which is illegal. The learned counsel submit that, petitioners are at the verge of retirement and recovery is claimed in respect of payment made more than five years prior to the impugned action. According to learned counsel hardship would be caused to petitioners, if the recovery is claimed.

3. Mr. Deshmukh, the learned advocate for the respondent/Zilla Parishad submits that, petitioners have given an undertaking that in case pay fixation is found to be wrongly done, then respondents can claim recovery. In that case the respondents are entitled to claim recovery. The learned counsel rely on the judgment of the Apex Court in a case of **High Court of Punjab and Haryana Vs. Jagdev Singh** reported in ***(2016) 4 SCC 267***.

4. The learned counsel for petitioners rely on the judgment of the Apex Court in a case of **State of Punjab Vs. Rafiq Masih** reported in ***AIR 2015 SC 696***.

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

7. In a case of High Court of High Court of Punjab and Haryana Vs. Jagdev Singh referred to supra, the aggrieved party therein was a Judicial Magistrate First Class, whereas petitioners in these cases are Class - III employees. The recovery claimed is regarding payment made prior to five years of the impugned action. The petitioners are at the verge of retirement and hardship would be caused to them if recovery is claimed. The Apex Court in the case of State of Punjab Vs. Rafiq Masih supra has laid down 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 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.

8. The cases of petitioners are within the ambit and purview of parameters laid down by the Apex Court in the above said judgment.

9. In the light of the above, we pass following order.

10. The impugned action of respondents to the extent of recovery only is quashed and set aside. The writ petitions accordingly are disposed of. No costs.

[A. M. DHAVALÉ, J.]

[S. V. GANGAPURWALA, J.]

bsb/Jan. 19