

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

59 WRIT PETITION NO.13656 OF 2018

MOHAMMAD QUDER KHAN MOHD YAKUB KHAN ..PETITIONER

VERSUS

AURANGABAD MUNICIPAL CORPORATION AURANGABAD THROUGH
COMMISSIONER AND ANOTHER ..RESPONDENTS

WITH

WRIT PETITION NO.13657 OF 2018

KRISHNA PRABHAKAR PURANIK ..PETITIONER

VERSUS

AURANGABAD MUNICIPAL CORPORATION AURANGABAD THROUGH
COMMISSIONER AND ANOTHER ..RESPONDENTS

WITH

WRIT PETITION NO.13658 OF 2018

SAYED KHAYOUM SAYED HUSEN ..PETITIONER

VERSUS

AURANGABAD MUNICIPAL CORPORATION AURANGABAD THROUGH
COMMISSIONER AND ANOTHER ..RESPONDENTS

...

Mr. Shailesh P. Brahme, Advocate for the
Petitioners.

Mrs. Anjali Dube (Bajpai), Advocate for Respondent
Nos.1 and 2.

...

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

DATED : 10th APRIL, 2019.

PER COURT:-

1. Mr. Brahme, learned counsel for
petitioners submits that petitioners after
attaining the age of superannuation and after

having retired from service re-pay fixation was done and recovery claimed. The learned counsel submits that all these petitioners were working on Class-III post. According to the learned counsel no undertaking was given at the time of pay fixation done in the year 1994. The undertaking was taken by respondents after the retirement of petitioners. The learned counsel relies on the judgment of the Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer)** reported in (2015) 4 SCC 334.

2. Smt. Dube, learned counsel for the respondent-Corporation submits that because of the applicability of the wrong provision pay fixation was incorrectly done. Rule 11(1)(A) was wrongly applied instead of Rule 11(4) of Maharashtra Civil Services Rules and because of that the incorrect pay fixation was done. The petitioners have not challenged the re-pay fixation done. The petitioners had given an undertaking that any access payment that might be found to be made as a result of incorrect fixation of pay would be adjusted against the future payment.

3. It is not disputed that petitioners retired as Class-III employees. It is after retirement re-pay fixation is done. The recovery is claimed of an amount five years prior to the retirement. Hardship would be caused in case the

recovery is made from petitioners from the retiral benefits. The Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer)** (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.”

4. The case of the petitioner is squarely covered as per the parameters laid down in the aforesaid judgment. More over, the undertaking on which the respondents rely is obtained from petitioners not at the time of pay fixation done earlier while in service but after retirement.

5. In light of the above, the impugned order to the extent of recovery is quashed and set aside. If any recovery is made pursuant to the re-pay fixation done, then the same shall be refunded to petitioners preferably within a period of three months.

6. Writ Petitions accordingly disposed of.
No costs.

(A. M. DHAVALA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/April-19