

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

WRIT PETITION NO.9693 OF 2019

Eknath s/o Irbaji Kalyankar

..Petitioner

Versus

The State of Maharashtra
through its Secretary,
Rural Development & Water
Conservation Department,
Mantralaya, Mumbai and ors.

..Respondents

Mr S.B. Sontakke, Advocate for petitioner
Mrs V.S. Choudhary, A.G.P. for respondent no.1
Mr S.B. Pulkundwar, Advocate for respondents no.3 to 4

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 3.2.2020

ORAL ORDER :

1. The petitioner challenges the order claiming recovery from the petitioner.
2. Mr Sontakke, learned counsel for petitioner submits that the petitioner has retired from service. After retirement, the recovery is claimed. The petitioner has retired as a Primary Teacher – Class-III. Mr Pulkundwar, learned Counsel for respondents no.2 and 3 submits that erroneously additional increment was given to the petitioner. Recovery was claimed with the petitioner was in service.
3. The recovery is claimed in respect of the increment given in the year 2009 i.e. prior to five years. The petitioner has retired as Class-III employee. It would be inappropriate to recover the said amount from the retiral benefit of the petitioner. All the parameters laid down by the Apex Court in the judgment of **State of Punjab & Ors. Vs. Rafiq**

Masih (White Washers), reported in (2015) 4 SCC 334 are attracted.

4. In light of above, the impugned order to the extent of recovery is quashed and set aside. In case, any amount is recovered from the petitioner, then the same shall be refunded to the petitioner within four months.

5. Writ Petition accordingly disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)

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