

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

WRIT PETITION NO.1147 OF 2018

1. Mahadu s/o Datturao Pawar,
Age 53 years, Occu. Stenographer,
District Court, Latur,
R/o Vithal Nagar, AUSA road, Latur
2. Angad s/o Manikrao Gaikwad,
Age 57 years, Occu. Senior Clerk,
Civil Court, Junior Division,
Renapur,
R/o Sharmphal Niwas, Prakash Nagar,
Behind Gore Kirana Shop,
Prakash Nagar, Latur 413 531
3. Anand s/o Vijaykumar Kasture,
Age 47 years, Occu. Sr. Clerk,
District Court, Latur,
R/o Moti Nagar, Latur
4. Sham s/o Shripatrao More,
Age 58 years, Occu. Asstt. Supdt.,
Civil Court, S.D. Udgir,
R/o Shendze Building,
Barshi road, Latur
5. Prakash s/o Kishanrao Changlerkar,
Age 50 years, Occu. Sr. Clerk at
Udgir Court, R/o C/o Salvnke House,
R/o C/o Salvnke House,
Nai-Abadi, Udgir, Taluka Udgir,
District Latur
6. Prakash s/o Tukaram Shinde,
Age 55 years, Occu. Jr. Clerk,
District Court, Latur
R/o Ganga-Nagar, Barshi road,
Latur, District Latur
7. Keshav s/o Digamber Telange,
Age 56 years, Occu. Service (Peon),
District Legal Service Authority,
District Court, Latur
R/o Shashkiya Colony,
Barshi road, Latur
8. Javed s/o Mahemood Shaikh,
Age Major, Occu. District and
Sessions Court, Latur,

R/o Husainyio Colony,
Near Husainiya Masjid,
Indira Nagar, Latur

9. Arjun s/o Haribhau Nagaresoge,
Age 47 years, Occu. Driver,
District Court, Latur
R/o Government Colony,
Barshi road, Latur,
District Latur
10. Kalidas s/o Janardhan Mohite,
Age 46 years, Occu. Service (Peon),
Civil Judge, Senior Division, Latur
R/o Kashargv, Taluka District Latur
11. Shashikant s/o Rajaram Ramdashi,
Age 46 years, Occu. Peon,
Civil Judge, Senior Division, Latur
R/o Ram Mandir, Katghar Galli,
Ausa, Tq. Ausa, District Latur
12. Raghunath s/o Sambhaji Kamble,
Age 60 years, Occu. Retired Sr. Clerk,
District Court
R/o Gopal Nagar, Latur
13. Merusniha w/o Mansur Saikh,
Age 55 years, Occu. Sweeper,
District Court, Latur
R/o Sanjay Nagar, Labour Colony,
Latur
14. Atmaram s/o Bajaji Shirmangole,
Age 37 years, Occu. Bailiff,
Civil Court (S.D.), Ahmedpur,
R/o C/o Madhavi Deokatte,
New Vidyanagar, Ahmedpur,
Taluka Ahmedpur, District Latur
15. Sudhakar s/o Tukaram Hatagale,
Age 49 years, Occu. Service (Sr. Clerk),
District Court, Latur
R/o Khorli Galli, Latur
16. Nivritti s/o Narhari Dure,
Age 53 years, Occu. Sr. Clerk,
District Court,
R/o District Court, Latur
17. Chandrakant s/o Ramrao Gambhire,
Age 39 years, Occu. Jr. Clerk,

District Court, Latur,
R/o at Post Sikandarpur, Taluka and
District Latur

18. Ramakant s/o Ganganna Bhongirwar,
Age 56 years, Occu. Service,
Asstt. Superintendent,
Civil Court (J.D.), Deoni,
Taluka Deoni, District Latur
R/o C/o Patene's House,
Navi Abadi, At post Udgir,
District Latur

.. Petitioners

Versus

1. State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai
2. State of Maharashtra,
Through its Secretary of Law
& Judiciary Department,
Mantralaya, Mumbai
3. Principal District and Sessions Judge
in Administrative Capacity,
District Court, Latur
4. Accountant General-II,
Nagpur, Accounts Department
Nagpur
5. Accounts Officer,
Aurangabad through Pay
Verification Department,
Aurangabad
6. The Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai

.. Respondents

Mr Gaurav L. Deshpande, Advocate for petitioners
Mr S.B. Yawalkar, A.G.P. for respondents no.1, 2, 4 and 6
Mr A.B. Kadethankar, Advocate for respondent no.3

**CORAM : PRASANNA B. VARALE AND
ANIL S. KILOR, JJ.**

DATE : 9th January 2020

ORAL JUDGMENT (Per Anil S. Kilor, J.)

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, the matter is taken up for final disposal at admission stage.
2. The petitioners have raised a grievance regarding recovery of excess amount paid to the petitioners towards advance increment for the period from 1.10.2006 to 1.10.2015.
3. The petitioners are Class-III and Class-IV employees working as Superintendent, Assistant Superintendent, Bailiff, Junior Clerk, Senior Clerk, Stenographer, Driver, Peon, Sweeper in the District Court at Latur.
4. In the year 2006, the Government had implemented 6th Pay Commission recommendations. Thereafter, 'one advance increment' scheme was implemented to encourage the government employees who have done excellent work.
5. In the list of employees to whom advance increment was declared, the names of the petitioners were included in the year 2006, 2007 and 2008.
6. On 20.02.2019, a Government Resolution was issued by the State Government and thereby appointed a Committee namely 'State Salary Revise Committee' and on its recommendations, the implementation of advance increment scheme was stayed till the revised pay-scales are finalised.

7. Thereafter, vide Government Resolution dated 24.8.2017, it was decided by the State Government not to grant advance increment during the period 1.10.2006 to 1.10.2015 i.e. during the period for which the employees were entitled for the benefits of 6th Pay Commission recommendations. In view of the said Government Resolution, the employees who have received advance increment during the said period were declared not entitled for such advance increment.

8. Accordingly, on 6.9.2017, the learned Principal District and Sessions Judge, Latur issued a communication directing the recovery against the petitioners for the payment made to the petitioners towards advance increments for the period 1.10.2006 to 1.10.2015. The said communication is under challenge in the present petition.

9. Heard Mr Gaurav Deshpande, learned Counsel for the petitioners, Mr A.B. Kadethankar, learned Counsel for respondent no.3 – Principal District and Sessions Judge, Latur and learned S.B. Yawalkar, learned A.G.P. for respondents no.1, 2, 4 and 6.

10. The learned Counsel for the petitioners Mr Deshpande submits that the petitioners are Class-III and Class-IV employees and the advance increment paid to the petitioners during the period 1.10.2006 to 1.10.2015 was as per the scheme and policy in existence at the relevant time.

11. He submits that the said advance increment was never

demanded by the petitioners, but the State of Maharashtra, on its own as per its policy paid the same to the petitioners.

12. Thus, according to the learned Counsel for the petitioners, the recovery is illegal as the petitioners are not at fault and to fortify his contention, the learned Counsel for the petitioner relied upon the judgment of Honourable the Supreme Court of India in the case of **State of Punjab and ors., vs. Rafiq Masih (White Washer) and ors.**, reported in **(2015) 4 SCC 334** and particularly paragraph no.18.

13. Mr Deshpande, learned Counsel for the petitioners further argues that the Government Resolution dated 24.8.2017 which is the basis for recovery and issuance of letter dated 6.9.2017 cannot be given retrospective effect, as in the said Government Resolution, there is nothing expressly mentioned to give retrospective effect to the said Government Resolution. Thus, according to the learned Counsel for the petitioners, on this count also the recovery against the petitioners is bad.

14. Per contra, Mr Kadethankar, learned Counsel appearing for respondent no.3 opposed the petition and the prayers made in the petition and submits that as per the Government Resolution dated 24.8.2017, the recovery is initiated as the petitioners are not entitled for advance increment since they have received benefits as per the 6th Pay Commission recommendations and, therefore, according to him, respondent no.3 has rightly issued letter dated 6.9.2017 for recovery.

15. The learned A.G.P. echoed the arguments of respondent no.3 and submits that there is no illegality committed by respondent no.3 in issuing the letter for recovery of the amount paid to the petitioners towards advance increment during the period from 1.10.2006 to 1.10.2015.

16. We have considered the rival contentions raised by the parties. We have gone through the record and perused the judgment cited (*supra*).

17. It is not in dispute that the advance increment paid to the petitioners during the period from 1.10.2006 to 1.10.2015 was in accordance with the scheme of the Government at the relevant time, which was aimed at giving advance increment to appreciate the excellent work done by the employees.

18. It is also not in dispute that the petitioners never approached to the authorities demanding such advance increment. However, the Committee constituted for the said purpose enlisted the names of the petitioners for grant of such advance increment. Thus, it was as per the scheme of the Government, the said benefit was given to the petitioners. It is also not disputed that the petitioners are Class-III and Class-IV employees.

19. In the said backdrop of admitted facts, the case of *State of Punjab Vs. Rafiq Masih (supra)* would apply to the facts of the present case. The observations made by Honourable the

Supreme Court of India in case of State of Punjab Vs. Rafiq Masih (supra) in paragraph no.18 of the judgment read thus :

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, which 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, summarise the following few situations, wherein recoveries by the employees, would be impermissible in law :

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.”

In view of above observations made by the Honourable the Supreme Court of India in the case of State of Punjab Vs. Rafiq Masih, we have no hesitation to hold that the impugned recovery initiated vide letter dated 6.9.2017 is illegal and contrary to the well settled law position.

20. Moreover, from the Government Resolution dated 24.8.2017, we do not find anything in the said Government Resolution from which it can be gathered that the said Government Resolution is made applicable with retrospective effect. Thus, we hold that the said Government Resolution is having prospective effect.

21. In the said backdrop, we are of the view that the present petition deserves to be allowed and the same is accordingly allowed in terms of prayer clause (B). The impugned letter dated 6.9.2017 issued by respondent no.3 - Principal District and Sessions Judge, Latur is hereby quashed and set aside.

22. Rule is made absolute in above terms with no orders as to costs.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

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