

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1237 OF 2021
WITH CA/2182/2021 IN WP/1237/2021**

SMITA BHASKARRAO BHALERAU PURANIK ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. D. R. Irale Patil, Advocate for the Petitioner.
Mr. P. K. Lakhotiya, AGP for Respondents-State.
Mr. K. D. Munde, Advocate for Respondent Nos.2 to 5.

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**CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATED : 26th OCTOBER, 2021.

PER COURT:-

1. Heard Mr. Irale Patil, learned counsel for the petitioner, learned A.G.P. for respondent no.1 and Mr. Munde, learned counsel for respondent nos.2 to 5.

2. Mr. Irale Patil, learned counsel submits that, the petitioner had voluntarily retired from service. After the retirement of the petitioner, the recovery is claimed on the ground that excess payment is made. The learned counsel submits that, the same is not permissible. The learned counsel relies upon the judgment of the Apex Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others** reported in (2015) 4 SCC 334.

3. The learned counsel for respondent nos.2 to 5 submits that, erroneously because of wrong pay fixation the excess amount was paid. As erroneously excess amount was paid, the respondents are entitled for recovery.

4. It is not disputed that, at the time of retirement the petitioner was working as Class-III employee. It is also not case of respondents that, the excess amount was paid to the petitioner because petitioner practised fraud or made misrepresentation. If the authority concerned granted excess payment due to wrong pay fixation in favour of the petitioner, either by inadvertence or by mistake, without there being any fault on the part of the petitioner, the petitioner cannot be held responsible for excess amount. The same shall be unreasonable and inequitable. The recovery is claimed of the period prior to five years. All the parameters set forth in the judgment of the Apex Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others** (supra) are satisfied in the present case.

5. In light of the above, the impugned order to the extent of claiming recovery from the petitioner is set aside. If any amount is recovered, the same shall be refunded to the petitioner preferably within a period of three (03) months from today.

6. Writ Petition is disposed of. No costs.

7. In view of disposal of writ petition, Civil Application No.2182 of 2021 stands disposed of.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/October-2021