

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
940 WRIT PETITION NO.8498 OF 2021**

SUDHAKAR NATHU PATIL ..PETITIONER

VERSUS

THE ZILLA PARISHAD JALGAON THR CHIEF EXECUTIVE
OFFICER AND ANOTHER ..RESPONDENTS

AND

942 WRIT PETITION NO.8500 OF 2021

TUKARAM RAMDAS GAVHALE ..PETITIONER

VERSUS

THE ZILLA PARISHAD JALGAON THR CHIEF EXECUTIVE
OFFICER AND ANOTHER ..RESPONDENTS

AND

964 WRIT PETITION NO.8522 OF 2021

PRAMOD TRAMBAK NEVE ..PETITIONER

VERSUS

THE ZILLA PARISHAD JALGAON THR ITS EXECUTIVE
OFFICER AND ANOTHER ..RESPONDENTS

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Mr. Vijay B. Patil, Advocate for the Petitioners.
Mr. Maheshkumar S. sonawane, Advocate for
Respondents.

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

DATED : 06th AUGUST, 2021.

PER COURT:-

1. The petitions are filed to the extent of recovery claimed.
2. Mr. Patil, learned counsel for petitioners submits that petitioners have retired from service.

From the retiral benefits, recovery is claimed by respondent no.2. If recovery is claimed, hardship would be caused to petitioners. The petitioners are not responsible for wrong pay fixation. The learned counsel for the petitioner relies on 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. Mr. Sonawane, learned counsel submits that petitioners had given an undertaking that they will refund the excess amount paid on account of wrong pay fixation.

4. It is not disputed that petitioners retired from service. The petitioners at the time of retirement were working as Class III employees. The undertaking according to respondents is given in the year 2009 and the benefit was granted to petitioners in the year 2013. In view of that, the undertaking would be of no avail.

5. The recovery claimed is beyond five years of the benefit given.

6. The Apex Court in the case of **State of Punjab Vs. Rafiq Masih** (supra) has laid down following parameters for not allowing recovery on account of wrong pay fixation:-

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

(ii) Recovery from the retired employees, or 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.

7. All the parameters laid down by the Apex Court in case of **State of Punjab Vs. Rafiq Masih** (supra) are attracted in the present case.

8. In light of the above, impugned orders to the extent of recovery are quashed and set aside.

9. Writ Petitions are disposed of. No costs.

10. In case, recovery is made by respondents, the same shall be refunded to petitioners within a period of four (04) months.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE