

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

911 WRIT PETITION NO.7867 OF 2021

RAVINDRA DAULAT SAVKARE
VERSUS
THE ZILLA PARISHAD, JALGAON,
THROUGH CHIEF EXECUTIVE OFFICER AND ANOTHER

...

Advocate for Petitioner : Mr. Vijay B. Patil.

Advocate for Respondents : Mr. Maheshkumar S. Sonawane.

...

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

DATE : 18th August, 2021.

P.C.:

1. The petition is filed to the extent of recovery claimed.
2. Mr. Patil, learned counsel for petitioner submits that petitioner has retired from service. From the retiral benefits, recovery is claimed by respondent no.2. If recovery is claimed, hardship would be caused to petitioner. The petitioner is 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 petitioner had given an undertaking that he will refund the excess amount paid

on account of wrong pay fixation.

4. It is not disputed that petitioner retired from service. The petitioner at the time of retirement was working as Class III employee. The undertaking according to respondents is given in the year 2009 and the benefit was granted to petitioner 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 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 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.

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 order to the extent of recovery is quashed and set aside.

9. Writ Petition is disposed of. No costs.

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

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

nga