

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

928 Writ Petition No.9955 Of 2021

Sushil Baliram Jadhav .. Petitioner
Versus
The State Of Maharashtra and Others .. Respondents

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AND

929 Writ Petition No.9956 Of 2021

Walmik Punju Jadhav .. Petitioner
Versus
The State of Maharashtra and Others .. Respondents

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AND

930 Writ Petition No.9957 Of 2021

Shivaji Mahadu Jadhav .. Petitioner
Versus
The State of Maharashtra and Others .. Respondents

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AND

931 Writ Petition No.9958 Of 2021

Kiransing Shamsing Patil .. Petitioner
Versus
The State of Maharashtra and Others .. Respondents

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Mr S.B. Sontakke, Advocate for the Petitioners in all the matters
Mr S.K. Tambe, AGP for the Respondent – State in WP No.9955 of 2021
Mr S.G. Karlekar, AGP for the Respondent – State in WP No.9956 of
2021
Mr A.R. Kale, AGP for the Respondent – State in WP No.9957 of 2021
Mr K.N. Lokhande, AGP for the Respondent-State in WP No.9958 of
2021
Mr S.B. Munde, Advocate for Respondent Nos.2 to 4 in all the matters

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

DATE : 07-09-2021

PER COURT : -

1. The petitioners are challenging the recovery made by the respondents from the retiral benefits.

2. Mr. Sontakke, learned Counsel for the petitioners relies on the judgment of Apex Court in the case of **State of Punjab Vs. Rafiq Masih (White washer)**, reported in **2015 (4) SCC 334**. Learned Counsel submits that after retirement, recovery is made by the respondents from the retiral benefits on the ground that pay fixation was wrongly done. It is not disputed that the petitioners are retired as Class-III employees.

3. Learned Counsel for the respondent - Zilla Parishad submits that the petitioners cannot take advantage of erroneous pay fixation. If the directions are given to refund the amount to the petitioners, then the petitioners would be unjustly enriched. The respondents have authority to recover the amount paid by mistake.

4. Pay fixation of the petitioners in the respective matters was done in the years 1996, 2010 & 2012 respectively. The case of the petitioners is covered by the judgment of Apex Court of in the case of **State of Punjab Vs. Rafiq Masih (White washer)** (supra), wherein the Apex Court laid down the following parameters.

(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 employees, 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.

5. All the parameters laid down in the judgment of **State of Punjab Vs. Rafiq Masih** (supra) are fulfilled. In light of the above, orders to the extent of recovery are quashed and set aside. The respondents shall return the amount recovered from the petitioners within a period of four months from today.

6. Writ Petitions are disposed of accordingly. No costs.

[R.N. LADDHA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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