

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

1044 WRIT PETITION NO.10627 OF 2021

Vijaysing Shankar Thoke ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

...

AND

1045 WRIT PETITION NO.10628 OF 2021

Prakash Bhavsing Patil ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

...

AND

1046 WRIT PETITION NO.10629 OF 2021

Dagaji Anantrao Gunjal ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

...

Mr. Sandeep B. Sontakke, Advocate for the Petitioner/s

Mr. S. K. Tambe, AGP for the Respondents/State

Mr. Sachin B. Munde, Advocate for Respondent Nos.2 to 5

...

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

DATE : 24th September, 2021

P.C. :

. 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 year 1996, 2010 & 2012 respectively. The case of the Petitioners is covered by the judgment of Apex Court 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 on account of wrong pay fixation within a period of four months from today.

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

(R. N. LADDHA, J.)

(S. V. GANGAPURWALA, J.)

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