

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

WRIT PETITION NO.13814 OF 2021

LALITA SADANAND GATHOD

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

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

Mr. S. G. Karlekar, AGP for Respondents-State.

Mr. S. B. Pulkundwar, Advocate for Respondent Nos.2
and 3.

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**CORAM : S. V. GANGAPURWALA &
S. G. DIGE, JJ.**

DATED : 13th DECEMBER, 2021.

PER COURT:-

1. The Petitioner is challenging the recovery made by the Respondents from the retiral benefits.

2. Mr. Sontakke, learned counsel for the Petitioner 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 Petitioner is retired as Class-III employees.

3. Learned counsel for the Respondent – Zilla Parishad submits that, the Petitioner cannot take advantage of erroneous pay fixation. If the directions are given to refund the amount to the Petitioner, then the Petitioner would be unjustly enriched. The Respondents have authority to recover the amount paid by mistake.

4. Pay fixation of the Petitioner in the present matter was done in the year 2007. The case of the Petitioner 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, order to the extent of recovery is quashed and set aside. The Respondents shall return the amount recovered from the Petitioner on account of wrong pay fixation within a period of four months from today.

6. Writ Petition is disposed of accordingly.
No costs.

(S. G. DIGE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE