

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2142/2021

Mangesh Vitthal Joshi & Ors. .. Petitioners

vs.

The State of Maharashtra & Ors. .. Respondents

.....
Mr. Vinod Sangvikar with Shakuntala Sangvikar, Vaishnavi
Gholave for the petitioners.

Mr. A. I. Patel, Addl. G. P. for the State.

Mr. Rajesh Datar for Respondent Nos. 3 and 4.

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**CORAM: K.K.TATED, &
RIYAZ I. CHAGLA, JJ.**

DATED : JUNE 24, 2021

P.C.

. Heard.

2. Rule. Rule made returnable forthwith.

3. By this petition, under Article 226 of the Constitution of India, the Petitioner is challenging the order issued by the Respondent No.3 recovering an excess payment made to the Petitioner along with their salary.

4. The learned counsel for the Petitioners submits that in view of the Judgment of the Apex Court in the matter of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. reported in (2015) 4 SCC 334, there is no question of recovery of an excess payment from the employees

belonging to Class III and Class IV. He relies on paragraph 18 of the said Judgment which reads thus:

“18 It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

(ii) Recovery from the retired employees, or the employee who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employee, 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.”

5. The learned counsel for the Petitioner submits that even in the similar matter this Court by order dated 12/03/2021 in Writ Petition No. 1890 of 2020 (High Court, Appellate Side) in the matter of ***Rajaram Tukaram Malghe & Ors. Vs. The State of Maharashtra, Through Secretary, Dept. of Finance and Ors.*** granted ad-interim protection. He

submits that the petitioners have also made representation dated 11/09/2018 to Respondent Nos. 3 and 4 for the same cause of action. He submits that till today the said representation is not decided by the authority. He submits that, in the interest of justice, this Hon'ble Court be pleased to direct Respondent Nos. 3 and 4 to decide the said representation as early as possible considering the Judgment of the Apex Court. He submits that the Petitioners may be permitted to file an additional submissions in support of their representation dated 11/09/2018.

6. The learned counsel for Respondent Nos. 3 and 4 submits that they require some time to file their reply. He submits that if this Court directs them to decide the Petitioners' representation dated 11/09/2018 then they must be given reasonable time.

7. It is to be noted that, the Petitioners' representation dated 11/09/2018 (Exhibit-D, Page-32) is pending for the last more than two and half years. Therefore, in the interest of justice, it is better to direct Respondent Nos. 3 and 4 to decide the same as early as possible. Hence, the following order:

a. The Petitioners are permitted to file an additional submission in support of their representation dated 11/09/2018 with Respondent Nos. 3 and 4 on or before 07/07/2021.

- b. Respondent Nos. 3 and 4 is directed to decide the Petitioners' representation dated 11/09/2018 as early as possible but in any case on or before 09/09/2021 and communicate the decision in writing to the Petitioner.
- c. All contentions of both the parties are kept open.
- d. The writ petition stands disposed of accordingly with those directions.
- e. No order as to costs,.
- f. Parties to act upon authenticated copy of this order.

(RIYAZ I. CHAGLA, J.)

(K.K.TATED, J.)