

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8539 OF 2021

Devka Eknath Marathe ... Petitioner
Vs.
State of Maharashtra and others ... Respondents

Mr. V. S. Tadke i/b. Mr. Balaji S. Shinde for Petitioner.
Mrs. P. J. Gavhane, AGP for Respondent Nos.1 to 4-State.

**CORAM : R. D. DHANUKA &
R. N. LADDHA, JJ.**

DATE : DECEMBER 22, 2021

P.C. :-

Rule. Mrs. Gavhane, learned AGP waives service for respondent Nos.1 to 4-State. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the recovery action initiated by respondent Nos.3 and 4 thereby directing recovery of alleged excess salary paid to the petitioner *vide* notice dated 15.01.2016, for the period 2002 onwards.

3. Learned counsel for the petitioner strongly placed reliance on the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih (White Washer) and others* reported in **(2015) 4 SCC 334**. The petitioner was appointed as Special Teacher on 16.06.1991 by following due process by the management of *Jayantiben Vitthalbhai Shapria, Karn Badhir Vidyalaya va Vastigruh, Lokmanyagar, Palghar*. It is the case of the petitioner that since October 2002, the petitioner became entitled to One Step Pay Scale and was granted the said pay-scale from October 2002. On 30.04.2019, the petitioner retired from service. The petitioner was not paid retiral benefits. Since July 2019, respondent Nos.3 and 4 have withdrawn the

pay scale of the petitioner with effect from October 2002 without issuing any notice to the petitioner.

4. Learned counsel for the petitioner places reliance on the judgment of this Court in the case of *Baban S. Chavan and others Vs. State of Maharashtra*, **Writ petition (St.) No.9543 of 2021** holding that no such recovery is permissible. Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** (*supra*) has dealt with this issue and held that recoveries by the employers would be impermissible in law from the employees belonging to Class III and Class IV service (or Group C and Group D service) and also when the excess payment has been made for a period in excess of five years, before order of recovery is issued. In paragraph 18 of the said judgment, Hon'ble Supreme Court held that it was 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 in the said judgment, the Hon'ble Supreme Court summarized situations wherein recoveries by the employers would be impermissible in law.

5. Mrs. Gavhane, learned AGP requested for adjournment on the ground that the judgment of the Hon'ble Supreme Court and the other judgments relied upon by the petitioner are distinguishable in the facts of this case. The learned AGP, however, could not distinguish the judgments of the Hon'ble Supreme Court and this Court. She strongly places reliance on the Government Resolution dated 14.08.2008 and would submit that the petitioner cannot be allowed to claim benefit of One Step Pay Scale.

6. In our view, the benefit already granted by the Government Resolution dated 06.08.2002 cannot be taken away by Government Resolution dated 14.08.2008 with retrospective effect. Be that as it may,

in view of the principles laid down by the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer)** (*supra*) restraining any recovery beyond the period of five years, the Government Resolution dated 14.08.2008 pressed in service by the learned AGP would not advance the case of the respondents-State.

7. In our view, the case of the petitioner is squarely covered by the judgment of the Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer)** (*supra*) and judgment of this Court in **Baban S. Chavan** (*supra*). We are respectfully bound by the said judgments. Accordingly, we pass the following order:-

- (a) Writ Petition is allowed in terms of prayer clause (B);
- (b) If any amount is already recovered by respondent Nos.3 and 4, the same shall be refunded to the petitioner within four weeks from today.

7. Rule is made absolute accordingly. There shall be no order as to costs.

8. Parties to act on an authenticated copy of this order.

(R. N. LADDHA, J.)

(R. D. DHANUKA, J.)

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