

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO.1193/2019

Walmik S/o Natthuji Kokate,
aged about 59 Yrs., Occu. Retired,
R/o Deorankar Layout, Ward No.10,
Wardha.

..Petitioner.

..Vs..

1. The State of Maharashtra,
through its Secretary (Education)
Rural Development Department,
Secretariat, Mantralaya, Mumbai -32.
2. The Zilla Parishad, Wardha,
through Chief Executive Officer,
Dist. Wardha.
3. Assistant Chief Auditor & Finance
Officer, Zilla Parishad, Wardha.
4. The Education Officer (Primary),
Zilla Parishad, Wardha, Dist. Wardha.

..Respondents.

Shri S.U. Bhure, Advocate h/f Ms S.S. Dashputre, Advocate for the petitioner.
Shri S.M. Ukey, Additional Government Pleader for respondent No.1.
Shri J.S. Mokadam, Advocate for respondent Nos.2 to 4.

CORAM :- SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.
DATED :- 5.1.2021.

ORAL JUDGMENT *(Per Avinash G. Gharote, J.)*

1. Heard Shri S.U. Bhure, learned counsel for the petitioner, Shri

S.M. Ukey, learned Additional Government Pleader for respondent No.1 and Shri J.S. Mokadam, learned counsel for respondent Nos.2 to 4.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent.

3. The present petition seeks to quash the communication dated 30.11.2018 issued by respondent No.3 seeking to make a recovery from the gratuity of the petitioner on account of excess amount paid to the petitioner. The petitioner relies upon the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and others V/s Rafiq Masih (White Washer) and others* reported in (2015) 4 SCC 334 to contend that his case is covered by the said judgment and, therefore, no recovery is permissible.

4. The respondent Nos.2 to 4 have today filed a reply in which it has been stated that an undertaking was given by the petitioner to the effect that in case any excess payment is found to have been made to the petitioner as a result of incorrect fixation of pay or on any other count, the same would be refunded by the petitioner to the Government either by adjustment against future payment due to him

or otherwise. This undertaking is dated 2.5.2009. Another undertaking to the same effect is dated 7.3.2019. The effect of giving an undertaking has been considered by the Hon'ble Supreme Court in the case of *High Court of Punjab and Haryana and others V/s. Jagdev Singh* reported in **(2016) 14 SCC 267** and it has been specifically held that where an undertaking is given by an employee to the employer that any excess payment calculated inadvertently would be refunded by him, the dictum in the case of *State of Punjab and others V/s Rafiq Masih (White Washer) and others* (supra) would not be applicable. Considering what has been stated in the case of *High Court of Punjab and Haryana and others V/s. Jagdev Singh* (supra), we do not find any merit in the petition. It is dismissed accordingly. Rule discharged. No costs.

JUDGE

JUDGE

Tambaskar.