

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

WRIT PETITION NO. 7826 OF 2019

Subhash S/o Pandharinath Dusane,
Age : 74 Years, Occ. : Retired,
R/o Plot No. 45/A Pankaj Nagar,
Yawal Road, Chopda, Tq. Chopda,
Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Rural Development Department,
Mantralaya, Mumbai.
 2. Chief Executive Officer,
Z. P. Ahmednagar, Dist. Ahmednagar.
 3. Chief Executive Officer,
Zilla Parishad, Nandurbar,
Dist. Nandurbar.
 4. Block Development Officer,
Panchayat Samiti Akkalkuwa,
Tq. Akkalkuwa, Dist. Nandurbar.
- .. Respondents

Shri Prakashsingh B. Patil, Advocate for the Petitioner.
Mrs. M. A. Deshpande, Addl.G.P. for the Respondent No. 1.
Mrs. Kavita S. Bhale, Advocate h/f Mrs. Suvarna M. Zaware,
Advocate for the Respondent No. 2.
Shri R. N. Jain, Advocate for the Respondent No. 3.
The Respondent No. 4 is served.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.
DATE : 29.09.2022.**

JUDGMENT (Per Sandeep V. Marne, J.) :-

. Rule. Rule made returnable forthwith. With the consent

of parties taken up for final hearing.

2. The petitioner challenges order dated 31.07.2018, by which recovery of Rs. 53,723/- is ordered against him. He also prays for grant of financial up-gradation on completion of 24 years of service with effect from 01.10.1995.

3. So far as the petitioner's prayer for grant of financial up-gradation on completion of 24 years of service from 01.10.1995 is concerned, we find the said prayer to be untenable in view of the provisions of the Government Resolution dated 01.04.2010. The second financial benefit on completion of 24 years was implemented by G. R. dated 01.04.2010 with effect from 01.10.2006. Prior to that, the erstwhile scheme envisaged grant of only one financial up-gradation on completion of 12 years of service. Thus on account of G. R. dated 01.04.2010, the petitioner has been granted second financial up-gradation on completion of 24 years of service with effect from 02.10.2006. Therefore, prayer of the petitioner for grant of such financial up-gradation from 01.10.1995 is untenable and deserves to be rejected.

4. This leave the prayer with regard to recovery. The case of the petitioner is squarely covered by the decision of the Apex Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) reported in _____. The recovery is effected after petitioner's retirement. The petitioner has retired on Group – C post. Therefore, the action of recovery is not maintainable and deserves to be set aside.

5. Consequently, we partly allow the petition and pass following order.

O R D E R

A. The prayer of the petitioner for grant of financial up-gradation with effect from 01.10.1995 is rejected. However, the order dated 31.03.2018 ordering recovery of Rs. 53,727/- (Rs. Fifty Three thousands Seven hundred Twenty Seven only) is set aside.

B. If any recovery is already made in pursuance of order dated 31.07.2018, the recovered amount be refunded to the petitioner along with interest @ Rs. 6% per annum.

C. Rule is made absolute in above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 22