

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

WRIT PETITION NO. 12839 OF 2021

Chhotu Vedu Bharti

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Chaitanya V. Dharurkar, Advocate for the Petitioner.

Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 to 4.

Shri A. S. Mirajgaonkar, Advocate for the Respondent Nos. 5 and 6.

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

DATE : 19.09.2022.

FINAL ORDER (Per Sandeep V. Marne, J.) :-

. By present petition, the petitioner challenges communications dated 07.07.2020, 02.12.2020 and 01.01.2021, under which his pension proposal has been returned on the ground that there was erroneous fixation of his pay during the year 1999-2000. By the impugned communications, it has been conveyed that the petitioner's probation was extended by one year during 1999-2000 and he was erroneously granted increments during that period which has resulted in excess payment to him. Accordingly, it has been directed that the excess payment be recovered and a fresh proposal be submitted for processing his pension.

2. Mr. Dharurkar, learned counsel appearing for the petitioner submits that the petitioner is only questioning recovery and not the refixation of his pay. He relies upon the judgment of the Apex Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) reported in *2015 AIR SCW 501* to contend that no recovery can be effected.

3. According to us, case of the petitioner is fully covered by the principles laid down by the Apex Court in the case of State of Punjab Vs. Rafiq Masih (*supra*). The petitioner being a Class III employee, recovery period being in excess of five years and recovery ordered is after his retirement, therefore, in our opinion, the impugned action of recovery is impermissible. Accordingly, we allow the writ petition and set aside the impugned communications only to the extent of directions to recover the excess payment made to the petitioner. The respondents are accordingly directed to process the pension papers of the petitioner and forward the same to the Office of the Accountant General within a period of two (02) months from today. The petitioner shall be paid pension and all other pensionary benefits as per rules. The writ petition is disposed of. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]