

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

WRIT PETITION NO. 232 OF 2022

Dilip Ramdas Vani

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Sandeep B. Sontakke, Advocate for the Petitioner.

Mr. S. K. Tambe, AGP for Respondents/State.

AND

WRIT PETITION NO. 239 OF 2022

Maharu Garadal Rathod

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Sandeep B. Sontakke, Advocate for the Petitioner.

Mr. S. K. Tambe, AGP for Respondents/State.

Mr. Sachin B. Munde, Advocate for Respondent Nos. 2 to 5.

AND

WRIT PETITION NO. 242 OF 2022

Rajendra Bhavdu Bhokre

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Sandeep B. Sontakke, Advocate for the Petitioner.

Mr. S. K. Tambe, AGP for Respondents/State.

Mr. Sachin B. Munde, Advocate for Respondent Nos. 2 to 5.

**AND
WRIT PETITION NO. 252 OF 2022**

Bharti Sanjay Amale

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Sandeep B. Sontakke, Advocate for the Petitioner.

Mr. S. K. Tambe, AGP for Respondents/State.

Mr. Sachin B. Munde, Advocate for Respondent Nos. 2 to 5.

**AND
WRIT PETITION NO. 254 OF 2022**

Govindsing Thansing Rajput

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Sandeep B. Sontakke, Advocate for the Petitioner.

Mr. S. K. Tambe, AGP for Respondents/State.

Mr. Sachin B. Munde, Advocate for Respondent Nos. 2 to 5.

**AND
WRIT PETITION NO. 262 OF 2022**

Raju Nimba Kumavat

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Sandeep B. Sontakke, Advocate for the Petitioner.

Mr. S. K. Tambe, AGP for Respondents/State.

Mr. Sachin B. Munde, Advocate for Respondent Nos. 2 to 5.

**AND
WRIT PETITION NO. 272 OF 2022**

Sadhana Chintaman Patil

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Sandeep B. Sontakke, Advocate for the Petitioner.
Mr. S. K. Tambe, AGP for Respondents/State.
Mr. Sachin B. Munde, Advocate for Respondent Nos. 2 to 5.

**AND
WRIT PETITION NO. 279 OF 2022**

Vijaysing Daulatsingh Patil .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Mr. Sandeep B. Sontakke, Advocate for the Petitioner.
Mr. S. K. Tambe, AGP for Respondents/State.
Mr. Sachin B. Munde, Advocate for Respondent Nos. 2 to 5.

**AND
WRIT PETITION NO. 285 OF 2022**

Subhas Dharamsing Rathod .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Mr. Sandeep B. Sontakke, Advocate for the Petitioner.
Mr. S. K. Tambe, AGP for Respondents/State.
Mr. Sachin B. Munde, Advocate for Respondent Nos. 2 to 5.

**CORAM : S. V. GANGAPURWALA &
S. G. DIGE, JJ.**

DATED : 06th JANUARY, 2022.

PER COURT:-

1. The petitioners are challenging the recovery made by the respondents from the retiral benefits.
2. Mr. Sontakke, learned Counsel for the petitioners relies on the

judgment of Apex Court in the case of **State of Punjab Vs. Rafiq Masih (White washer)**, reported in **2015 (4) SCC 334**. Learned Counsel submits that after retirement, recovery is made by the respondents from the retiral benefits on the ground that pay fixation was wrongly done. It is not disputed that the petitioners are retired as Class-III employees.

3. Learned Counsel for respondent-Zilla Parishad submits that the petitioners cannot take advantage of erroneous pay fixation. If the directions are given to refund the amount to the petitioners, then the petitioners would be unjustly enriched. The respondents have authority to recover the amount paid by mistake.

4. Pay fixation was done in the year 2013. The case of the petitioners is covered by the judgment of Apex Court of **State of Punjab Vs. Rafiq Masih (White washer) (supra)**, wherein the Apex Court laid down the following parameters.

(I) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

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

(iii) Recovery from employees, 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 employees, 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. All the parameters laid down in the judgment of **State of Punjab Vs. Rafiq Masih (supra)** are fulfilled. In light of the above, orders to the extent of recovery are quashed and set aside. The respondents shall return the amount recovered from the petitioners and wife of the petitioner in Writ Petition No. 242 of 2022 and husband of the petitioner in Writ Petition No. 252 of 2022 within a period of four (04) months from today.

6. Writ Petitions are disposed of accordingly. No costs.

(S. G. DIGE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

RS.B.