

**BASAVRAJ
GURAPPA
PATIL**

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2068 OF 2023

Pushpa Shyam Patil

..... Petitioner

Vs.

The State of Maharashtra and Ors.

..... Respondents

WITH

WRIT PETITION NO. 2069 OF 2023

Kalpana Hanumant Pawar

..... Petitioner

Vs.

The State of Maharashtra and Ors.

..... Respondents

WITH

WRIT PETITION NO. 2070 OF 2023

Suresh Hira Chavan and Anr.

..... Petitioners

Vs.

The State of Maharashtra and Ors.

..... Respondents

Mr. Balaji Shinde for petitioners.

Mr. P. P. Kakade, Govt. Pleader a/w Mr. R. P. Kadam, AGP for State.

**CORAM: S. V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATED : FEBRUARY 23, 2023

P.C.

1. Rule. Rule made returnable forthwith. With the consent of parties, taken up for final hearing at admission stage.

2. The petitioners have retired as Special Instructors from the institutions run by respondent nos.3 and 4.

3. The recovery is claimed on the ground that erroneous pay fixation. The learned counsel for the petitioners submits that the benefit of one step promotional pay-scale for working in tribal area was extended to the petitioners in the year 2006. However, because of the subsequent notification of the year 2008, it was clarified that the persons who are working in a non-tribal post would not be entitled to said benefit. The petitioners were granted the benefit earlier to the said notification. The learned counsel further submits that after retirement the recovery is being claimed by the respondents. The same would not be permitted. The petitioners are retired as Class III employees.

4. Reliance is placed on the decision of the Apex Court in the case of **State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.**, reported in (2015) 4 SCC 334. The petitioners also rely upon the order passed by this Court in the case of similarly situated employees.

5. We have heard the learned AGP for the respondents.

6. The learned AGP submits that as the benefits were granted to the petitioners on the erroneous pay fixation, the recovery is rightly claimed by the respondents.

7. It is not disputed that in all these matters some of the petitioners have retired and some of the petitioners are on the verge of retirement. It is also not disputed that recovery claimed is beyond five years. The Apex Court, in a case of **Rafiq Masih** (supra) in paragraph no.12, has observed as under:

“12. It is 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 to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (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 employee, 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."

8. The case of the present petitioners would be squarely covered by the judgment in the case of **Rafiq Masih** (Supra). Some of the petitioners have retired and some are on the verge of retirement. The recovery also is for a period beyond 5 years, as such the present case is covered by eventualities as laid down in paragraph nos. 12(ii) and (iii) of the judgment of Apex Court in the case of **Rafiq Masih** (Supra).

9. In the light of the above, the writ petitions are allowed. The impugned orders claiming recovery against the petitioners are

quashed and set aside. In case the respondents, pursuant to the said orders of recovery, have recovered some amount from the petitioners, then the respondents shall refund the said amount to the petitioners expeditiously and preferably within a period of six (06) months.

10. It is made clear that we have set aside the recovery and directed refund of recovered amount. However, the order of the respondents that the petitioners shall not be entitled to one step pay scales is upheld and the pension proposals of the petitioners, those who have retired, shall be processed considering that the petitioners are not entitled to one step pay scales.

11. Rule is accordingly made absolute accordingly. No costs.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)