

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1890 OF 2020

Rajaram Tukaram Malghe & Ors.

....Petitioners

V/S

The State of Maharashtra & Ors.

....Respondents

...

Mr. Vinod P. Sangvikar for the Petitioner.

Mrs. R.A. Salunkhe, AGP for Respondent No.1-State.

Mr. Rajesh Datar for Respondent Nos.2 and 3.

...

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

DATE : 13 APRIL 2023.

P.C.:

1 The Petitioners are challenging the recovery claim.

2 The recovery is on account of an alleged error in fixing pay of Petitioners in pay bands of Sixth Pay Commission in the year 2009.

3 The learned Counsel for the Petitioners submits that the Petitioners would not challenge the repay fixation done but are restricting the challenge to only recovery.

4 The learned Counsel for the Petitioners relies upon the judgment of the Apex Court in case of **State of Punjab vs. Rafiq Masih** reported in (2015) 4 SCC 334.

5 According to the learned Advocate for Respondent Nos.2 and 3 the Petitioners had given undertaking that in case subsequently it is found that because of erroneous pay fixation excess amount was paid they would refund it.

6 The learned Counsel for the Respondents relies upon the judgment of the Apex Court in case of **High Court of Punjab and Haryana vs. Jagdev Singh** reported in (2016) 14 SCC 267.

7 We have considered the submissions.

8 Some of the Petitioners are at the fag end of their service career. It is not disputed that all these Petitioners are class IV employees.

9 The recovery claim pertaining to the year 2009 is for a period in excess of five years. It is not the case of Respondents that the erroneous pay fixation was done on account of misrepresentation or fraud by the Petitioners. Now it would be iniquitous to recover the amount from the Petitioners. The parameters laid down by the Apex Court in case of **Rafiq Masih** (supra) are applicable in the present case.

10 In case of **Jagdev Singh** (supra) the person therein was a class I judicial officer.

11 We have perused the undertakings relied by the Respondents. In some of the cases even dates are not mentioned on the said undertakings and in case of 2 to 3 Petitioners the undertakings are not available. The undertakings are cyclostyle one. It appears that the said undertakings are taken in usual course while undertaking fixation on account of Sixth Pay Commission. The amount sought to be recovered is also not substantial.

12 In light of above, the impugned order, to the extent of recovery, is quashed and set aside. It is made clear that as far as repay fixation is concerned, the same has not been disturbed.

13 The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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signed by
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