

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

WRIT PETITION NO.12562 OF 2024

Shri Madhao Nilkanth Pande	}	
Age-59 years; Occu: Services	}	
R/at: B-7, Dwarka Sai Paradise,	}	
Shivsai Lane, Near Lotus Hospital,	}	
Pimple Saudagar, Pune-411 027.	}	
Mob: 7020955991	}	
Email: pandemn@gmail.com	}	.. Petitioner

RAMESHWAR
LAXMAN
DILWALE

Digitally signed by
RAMESHWAR
LAXMAN DILWALE
Date: 2024.09.18
18:45:58 +0530

Versus

1. The State of Maharashtra	}	
Through Principle Secretary,	}	
Higher and Technical Education Dept.	}	
Govt. of Maharashtra, Mumbai -032	}	
2. The Director,	}	
Technical Education Department-3	}	
Mahapalika Marg, Dhobitalav Road,	}	
Mumbai-400 001.	}	
3. Joint Director,	}	
Technical Education Department	}	
Regional Office Shivaji Nagar,	}	
Pune-411 016.	}	
4. The Principal,	}	
Govt. Polytechnic Awasari (kh)	}	
Tq-Ambegaon, Dist-Pune-412 405.	}	.. Respondents

Mr. Kailas S. Jadhav with Mr. Sarang Gundajwar, Advocates for the petitioner.

Mr. V. M. Mali, AGP for the respondent-State.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 13th SEPTEMBER, 2024.

ORAL JUDGMENT : (PER : A. S. CHANDURKAR, J)

1. Rule. Rule made returnable forthwith and heard the learned counsel for the parties. The petitioner is aggrieved by order dated 13/08/2024 passed by the learned Member, Maharashtra Administrative Tribunal in Original Application No.1067 of 2024. By that order a prayer for interim relief as made by the petitioner came to be refused.

2. At the outset, it may be stated that though the challenge raised is to an interim order passed by the Tribunal, it would be necessary to note that by the impugned order, a recovery has been directed from the salary of the petitioner prior to three months of his superannuation on 31/10/2024.

3. Prima facie, we find that the alleged excess payment pertains to the period from 23/07/2008 to 22/07/2011. The order of recovery is dated 25/06/2024. In paragraph 12 (II and III) of the judgment of the Supreme Court in *State of Punjab and others etc Vs. Rafiq Masih (White Washer) etc., 2015 4 SCC 334*, recovery from an employee due to retire within a period of one year of the order of recovery has been treated as impermissible. Similarly, the excess payment has been made prior to five years before the order of recovery was issued which is also impermissible.

4. We therefore find that a prima facie case for grant of interim

relief was made out. We are required to interfere since the impugned order causes grave prejudice to the petitioner and seeks to undertake recovery just prior to three months of his superannuation. We therefore consider it to be a fit case to entertain the writ petition under Article 226 of the Constitution of India.

5. Accordingly, the following order is passed:-

- i) It is directed that during the pendency of Original Application No.1067 of 2024, the effect of the communication dated 01/07/2024 shall remain stayed. In other words, no recovery for the months of September and October 2024 shall be effected from the petitioner's salary. This direction is subject to final outcome of the Original Application.
- ii) It is clarified that observations made herein are only for considering the prayer for interim relief. The Original Application shall be decided on its own merits and in accordance with law.
- iii) Rule is disposed of in aforesaid terms with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]