



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16766 OF 2024

Dayal Atmaram Malekar

...Petitioner

Versus

The State of Maharashtra

Thr. GP And Ors.

...Respondents

...

Adv. Imtiyaz Patel for the Petitioner.

Adv. B. V. Samant, Add GP a/w M. M. Pabale, AGP for Respondent nos.
1 to 4.

...

CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.

DATE : 19th NOVEMBER, 2024

Per Court :-

1. Leave to add prayer clause a(1) for challenging the orders of recovery. Addition be carried out forthwith.

2. The Petitioner has placed reliance on the judgment of the Hon'ble Supreme Court delivered in *State of Punjab And Ors. vs. Rafiq Masih (White Washer), reported in AIR 2015 Supreme Court 696*. This Petitioner has superannuated around 9 years old. Recovery has been ordered against him, post retirement, on the ground that his pay fixation

was wrongly done during their service tenure. The date of retirement is set out in paragraph 4 on page 6 of the memo of the Petition. The amount recovered is also set out therein. The Petitioner was working as a Police Naik.

3. The learned AGP has opposed the Petition on instructions and submits that if, the Petitioner is permitted to retain the excess amounts paid, it would amount to unjustful enrichment.

4. We are aware of the law laid down by the Hon'ble Supreme Court in *Syed Abdul Qadir And Ors vs State Of Bihar And Ors 2009 (3) SCC 475* and *Rafiq Masih* (supra). The Petitioner has retired as per date set out herein below :-

Sr. No.	Name	Position held at retirement	Date of Retirement	Amount recovered as excess amount (Rs.)
1.	Dayal Atmaram Malekar	Assistant Sub-Inspector	30.10.2015	97,841/-

5. In similar matters, this Court has quashed and set aside the recovery orders and refunded the amounts to the concerned employees

with a nominal interest of 6% p.a. for a period of three years preceding the filing of the Petition or the date of retirement, whichever may have last occurred.

6. In view of the above, **this Writ Petition is allowed.** The impugned order of recovery set out in prayer clause a(1), stands quashed and set aside. Let the amount be refunded to the Petitioner along with interest at the rate of 6% p.a. for a period of 3 years, within a period of 60 days from today.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)