



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1680 OF 2024

Rajendra s/o Rohidas Nikumbhe

-Vs-

The Joint Director of Vocational Education and Training, Amravati & Others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. N.B.Kalwaghe, counsel for the petitioner.
Mr. S.M.Ghodeswar, AGP for the respondents-State

**CORAM: NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.**

DATE : 21st NOVEMBER, 2024.

1. The challenge is to the communication dated 22/02/2024 at annexure 'F' issued by the respondent No.2-District Vocational Education and Training Officer, Akola directing recovery of excess payment from the petitioner and returning back the pension papers.

2. It is the case of the petitioner that after appointment on 07/10/1998 on the post of Lab Technician/Instructor, the approval was issued with effect from 07/10/1998 vide order dated 17/12/1998. After completion of probation, the petitioner gained deemed permanency and was rendered surplus as such his services were directed to be absorbed vide order of the Director dated 23/04/2023.

3. The petitioner stood superannuated on

13/04/2024 before which vide impugned communication, the recovery was directed to be effected.

4. It is the case of the petitioner that since the petitioner was working in Class-III category, in view of law laid down by the Hon'ble Apex Court in the case of **State of Punjab and others v. Rafiq Masih (White Washer) and others**, reported in (2015) 4 SCC 334, the recovery cannot be effected.

5. Mr. Kalwaghe, learned counsel for the petitioner, would urge that the petitioner has neither suppressed nor lodged any false claim which has led to release of the additional amount. In such an eventuality, the petitioner cannot be blamed for excess payment. Even otherwise, it is claimed that since the petitioner has superannuated, the recovery ought not to have been effected just before his superannuation. Reliance is also placed on the order of Division Bench of this Court in ***Writ Petition 12839 of 2021 (Chhotu Vedu Bharti v. The State of Maharashtra and others)***, decided on 19/09/2022.

6. As against above, Mr. Ghodeswar, learned AGP would urge that the recovery was effected just before the retirement of the petitioner and as such cannot be faulted with as the petitioner was paid excess amount to which in law he was not entitled to. He would try to distinguish the

case of the petitioner from the judgment in the matter of **Rafiq Masih** cited supra.

7. We have appreciated the rival submissions.

8. The superannuation of the petitioner from Class-III post is not a disputed fact.

9. The respondents have failed to demonstrate so as to infer that the petitioner can be blamed for the purpose of drawing excess amount from the respondents. For the mistake of the respondents making calculations towards payment of dues, the petitioner cannot be made to suffer. In support of aforesaid observation, reliance can be placed on the Apex Court judgment in the matter of **Rafiq Masih** cited supra. So also the issue is squarely covered by the decision in the matter of **Chhotu Vedu Bharti** decided at Aurangabad Bench of this Court referred above.

10. In that view of the matter, the impugned communication dated 22/02/2024 is hereby quashed and set aside.

11. It is declared that the order of effecting recovery against the petitioner is illegal and same is quashed and set aside. It is directed that the pension papers of the petitioner be processed immediately and it shall be ensured that the petitioner's pension be released within a period of three months from today.

12. The Writ Petition accordingly stands allowed in the above terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)