



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**WRIT PETITION NO. 14094 OF 2021
WITH
CIVIL APPLICATION NO. 7359 OF 2024 IN WP/14094/2021**

- 1] Smt. Sunanada W/o Vilas Wahul
Age – 56 years, Occu Auxiliary Nurse Midwife -
Presently working at Subcenter Chakegaon,
Primary Health Centre, Manoor, Tq. Vaijapur,
under Zilla Parishad, Aurangabad, District Aurangabad
- 2] Smt. Ginyan W/o Prakash Bhaskare,
Age – 53 years, Occu Auxiliary Nurse Midwife -
Presently working at Subcenter Kachner,
Primary Health Centre, Kachner, Tq. Aurangabad
under Zilla Parishad, Aurangabad, District Aurangabad

Deceased through LRS

- 2(1) Prakash S/o Datturam Bhaskare
Age : 62 years, Occu : Nil
- 2(2) Surekha D/o Prakash Bhaskare
Age : 32 years, Occu : Nil
- 2(3) Gangasagar D/o. Prakash Bhaskare
Age : 29 years, Occu : Nil

All residence of Kamal Nagar Housing Society,
Bhavsingpura, Chhatrapati Sambhajinagar,
Dist. Chhatrapati Sambhajinagar

***(Amendment carried out as per Court's
Order dated 11.10.2024)***

- 3] Smt. Lata D/o Arjun Bharti,
Age – 52 years, Occu Auxiliary Nurse Midwife -
Presently working at Primary Health Center,
Kachner, Tq. Aurangabad, under Zilla Parishad,
Aurangabad, District Aurangabad
- 4] Smt. Baby D/o Ramchandra Mahapure,
Age – 56 years, Occu – Lady Health Visitor (L.H.V.)
Presently working at Primary Health Centre,
Banoti, Tq. Soygaon, under Zilla Parishad,
Aurangabad, District Aurangabad

- 5] Smt. Satyabhama D/o Dashrath Chavan
Age – 57 years, Occu Auxiliary Nurse Midwife -
Presently working at Subcenter Bazarthan,
Primary Health Centre, Gadepimpalgaon,
Tq. Vaijapur, under Zilla Parishad,
Aurangabad, District Aurangabad
- 6] Smt. Asha W/o Raosaheb Borade,
Age – 57 years, Occu – Lady Health Visitor,
Primary Health Centre, Aland, Tq. Phulambri
under Zilla Parishad, Aurangabad, District Aurangabad
- 7] Smt. Dwarka Narayan Payghan,
Age – 55 years, Occu – Lady Health Visitor,
Primary Health Centre, Manoor, Tq. Vaijapur,
under Zilla Parishad, Aurangabad, District Aurangabad
- 8] Smt. Rekha Dnyandeo Sarode,
Age – 62 years, Occu Auxiliary Nurse Midwife -
P.H.C. Gadhepimpalgaon, Tq. Vaijapur (now retired)
under Zilla Parishad, Aurangabad, District Aurangabad
- 9] Smt. Pushpa Chagansing Rajput,
Age – 50 years, Occu Auxiliary Nurse Midwife -
Presently working at Subcenter Relegaon,
Primary Health Centre, Jategaon, Tq. Phulambri,
under Zilla Parishad, Aurangabad, District Aurangabad .. Petitioners

Versus

- 1] The State of Maharashtra,
Through the Secretary,
Ministry of Rural Development and
Water Conservation Department,
Mantralaya, Mumbai – 32
- 2] The Chief Executive Officer,
Zilla Parishad, Aurangabad
District Aurangabad
- 3] The District Health Officer,
Zilla Parishad, Aurangabad,
District Aurangabad .. Respondents

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Advocate for the petitioners : Mr. J.S. Deshmukh
AGP for the respondent no. 1 : Ms. P.J. Bharad
Advocate for respondents no. 2 and 3 : Mr. U.B. Bondar

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**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 28 FEBRUARY 2025

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. It is made returnable forthwith. Learned AGP waives service for respondent no. 1. Mr. U.B. Bondar waives service for respondents no. 2 and 3.

2. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. The petitioners were appointed as Auxiliary Nurse Midwife (ANM) in the establishment of respondents no. 2 and 3 i.e. the Chief Executive Officer of the Zilla Parishad, Aurangabad and the District Health Officer therein. Some of them were promoted and even working as Lady Health Visitor. They were granted time bound promotion under the schemes of the State government and were re-fixed at a higher scale. Under the ground of erroneous pay fixation, respondents no. 2 and 3 have started recoveries. Petitioners claim to be class – III employees. Petitioner no. 2 has died after filing of the petition and his legal representatives have been brought on record. Some of the petitioners still continue to be in the employment whereas the rest stand retired.

4. By resorting to the law laid down in the matter of ***State of Punjab and others V. Rafiq Masih (WhiteWasher) etc; AIR 2015 SC 696***, they are challenging the circular / communication dated 27.09.2013 issued by respondent no. 3 – District Health Officer (DHO) directing re-fixation of petitioners' pays and further directing the recoveries of the over-payment.

5. The respondents have not filed any reply.

6. By moving civil application no. 7359 of 2024 and by referring to several decisions of this Court including in the case of similarly placed ANMs and Lady Health Visitors, the petitioners pray for equal treatment and pray for allowing the writ petition. They have annexed following decisions :

(i) *Smt. Jayshree Trimbak Takalkar Vs. The Chief Executive Officer and another (writ petition no. 4616 of 2016) With writ petition no. 4624 of 2016 (Smt. Shobha Ramesh Patil Vs. The Chief Executive Officer and another) – common decision dated 22.12.2017*

(ii) *Pramila Vasudeorao Kumbhare and others Vs. The State of Maharashtra and others (writ petition no. 12198 of 2015 decision dated 01.03.2018)*

(iii) *Mandikini Gokuldas Thanage and others Vs. The State of Maharashtra and others (writ petition no. 1689 of 2014 – decision dated 08.08.2018)*

(iv) *Smt. Rama W/o Purushottam Wanjari Vs. The State of Maharashtra and others (writ petition no. 10252 of 2018 decision dated 07.09.2018)*

(iv) *Leela Gopalrao Sonawane and another Vs. The State of Maharashtra and others (civil application no. 7809 of 2023 in writ petition no. 10522 of 2019 and writ petition no. 10522 of 2019 decision dated 07.07.2023)*

7. Heard both the sides. The issue is no longer *res integra*. The petitioners, admittedly, are class – III employees and would be squarely covered by clause 12(i) of **Rafiq Masih** (supra) which lays down that no recoveries can be made in respect of the over-payments due to wrong pay fixation in respect of class – III and class – IV employees.

8. The only debate could have been as to if **Rafiq Masih** (supra) applies only in respect of the recoveries made after the superannuation from the pension or the pensionary benefits. A careful reading of the judgment would reveal that no such distinction was in contemplation of the Supreme Court which fact is evident from reliance placed by it in the earlier decision in the case of Col. **B.J. Akkara V. Government of India; (2006) 11 SCC 709**. The following observations from paragraph no. 11(ii) from **Rafiq Masih** (supra) are relevant :-

11 (ii). Examining a similar proposition, this Court in Col. B.J. Akkara v. Government of India,(2006) 11 SCC 709 :(2006 AIR SCW 5252),observed as under:

"28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or

where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.” (Emphasis is ours)

A perusal of the aforesaid observations made by this Court in Col. B.J. Akkara's case (supra) reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, in as much as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV - sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

9. In the light of such observations, even if some of the petitioners are still in the employment, nothing can be recovered from them on the ground of over-payment in the light of decision in the matter of **Rafiq Masih** (supra).

10. Independently, in respect of the selfsame zilla parishad, in the matters of Smt. Jayshree Trimbak Takalkar and Smt. Shobha Ramesh Patil (supra), the selfsame communication dated 27.09.2013 has been quashed and set aside, which was also coming under the

same zilla parishad, Aurangabad. Therefore, even on the ground of parity, the petitioners are entitled to have the same relief.

11. The writ petition is allowed.

12. The impugned communication / order dated 27.09.2013 issued by respondent no. 3 is quashed and set aside.

13. No recoveries shall be made by resorting to it and wherever those have been already made from any of the petitioners, those shall be refunded within eight weeks.

14. It is made clear that this order shall not be interpreted to mean that respondents no. 2 and 3 are prevented from undertaking re-pay fixation.

15. Rule is made absolute in above terms.

16. Pending civil application is disposed of.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/