



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

956 WRIT PETITION NO. 13532 OF 2021

VITHOBA BADHAJI BHANGARE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Mr. Khedkar Avinash S.

AGP for Respondent/State : Mr. S.R. Yadav-Lonikar

Advocate for Respondent No.2 : Mr. Patil Shamsunder B.

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**CORAM : R.G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.**

DATE : 05.12.2025

FINAL ORDER : (PER : ABASAHEB D. SHINDE, J.)

. Rule. Rule is made returnable forthwith. With the consent of parties, heard finally at the admission stage.

2. The petitioner before this Court is aggrieved with the recovery initiated by the Respondent No.3 from salary of the petitioner under the garb of wrong pay-fixation.

3. We have considered submissions advanced on behalf of learned counsel for the petitioner as well as learned counsel for respondents. The record shows that the petitioner came to be appointed as Peon with the Respondent No.3 herein on 18.01.1990. Thereafter, pay-fixation of the petitioner was done on 18.10.2019 for the period of 01.01.2016 to 01.07.2019. However, after almost two years from the date on which pay-fixation of the petitioner was done, the respondents initiated recovery proceedings against the petitioner under the garb of

wrong pay-fixation. The petitioner therefore, is before this Court challenging the same.

4. Learned counsel for the petitioner submits that the petitioner is working as a Class-III employee and the pay-fixation of the petitioner for the period of 01.01.2016 to 01.07.2019 was done on 18.10.2019. At that time, no undertaking was obtained from the petitioner. It is only thereafter that the respondents started recovery of amount of Rs.1,55,386/- on the count of over payments. Learned counsel for the petitioner submits that the action of the respondents initiating the recovery from salary of the petitioner under the garb of wrong pay-fixation, is impermissible. The learned counsel for the petitioner also contends that the case of the petitioner falls within Clause (i) to (iv) of the guidelines issued by the Hon'ble Apex Court in the case of **State of Punjab vs. Rafiq Masih (White Washer) & Ors.** reported in **2015(4) SCC 334**.

5. Learned counsel for the respondents on the other hand submits that considering the fact that the petitioner is a government employee, the petitioner should avail the remedy of filing Original Application before the Maharashtra Administrative Tribunal (in short M.A.T.). The learned counsel for the respondents also submits that, the petitioner has been paid over payments due to wrong pay-fixation. Therefore, the respondents are justified in recovering the said over payments. The learned counsel for the respondents further submits that the petitioner on 21.04.2022 has given an undertaking stating that in future, if the petitioner is paid excess amount, he will refund the same. Therefore, it

is submitted that the Writ Petition deserves to be dismissed.

6. Considering the submissions advanced, we are of the view that the case of the petitioner is falling within clause (i) & (iv) of guidelines issued by the Hon'ble Apex Court in the case of **State of Punjab vs. Rafiq Masih (White Washer) & Ors.** (supra) for the reason that, admittedly the petitioner is a Class-III employee. So also the petitioner has been paid an amount which is sought to be recovered under wrong pay-fixation and admittedly at the time of pay-fixation, no such undertaking was obtained from the petitioner. The contention of learned counsel for the respondents that by virtue of undertaking given, the petitioner is precluded from challenging the recovery, is unacceptable for the reason that, relying on the judgment of Hon'ble Apex Court in the case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh** reported in **2016 (14) SCC 267**, this Court while considering similar issue held that employer can not recover the amount paid to the employee on the basis of a declaration/undertaking if it is found that the so called declaration/undertaking is not in pursuance of the statutory rules in the case of **The State of Maharashtra and Ors. Vs. Rekha Vijay Dubey and Ors.** reported in **(2022) 3 Mh.L.J.55**.

7. We have perused the so called declaration/undertaking given by the petitioner which is annexed by the respondents alongwith their affidavits and we find that the said undertaking seems to have been obtained on 21.04.2022 whereas the pay-fixation of the petitioner was carried out on 18.12.2019. The said undertaking cannot be used

against the petitioner. So far as the, objection raised by learned counsel for the respondents that the petitioner can avail the remedy of approaching the M.A.T. is concerned, since this Writ Petition is pending from 2021, so also considering the fact that the amount sought to be recovered from the petitioner is a meager amount of Rs.1,55,386/- in peculiar facts and circumstances of the case, we are inclined to entertain the Writ Petition, since, we find that the recovery sought to be made from the petitioner is unsustainable. In the light of the law laid down by the Hon'ble Apex Court in the case of **State of Punjab vs. Rafiq Masih (White Washer) & Ors.** (supra) and also considering the judgment of this Court in the case of **The State of Maharashtra and Ors. Vs. Rekha Vijay Dubey and Ors.** (supra), we are inclined to allow the Writ Petition. Hence, we pass the following order :

ORDER

- i) The Writ Petition is allowed in terms of prayer clause 'A' and 'C'.
- ii) The Rule is this made absolute in above terms.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)

vsj..