

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7346 OF 2025

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|-----|----------------------------|-------------------------------|
| 1) | Balasaheb Nagnath Gore. |] |
| | |] |
| 2) | Shivaji Prabhakar Fartade. |] |
| | |] |
| 3) | Mohan Bapu Gaikwad. |] |
| | |] |
| 4) | Arvind Annasaheb Patil. |] |
| | |] |
| 5) | Bibhishan Sopan Pagire. |] |
| | |] |
| 6) | Mangal Sudhir Pandit. |] |
| | |] |
| 7) | Meena Balasaheb Gore. |] |
| | |] |
| 8) | Sanjay Devidas Bhaskare. |] |
| | |] |
| 9) | Aruna Sanjay Bhaskare. |] |
| | |] |
| 10) | Sushila Sadashiv Dange. |] |
| | | <u>...Petitioners.</u> |

Versus

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|----|---|---|
| 1) | The State of Maharashtra |] |
| | Through The Secretary, |] |
| | Education Department Mantralaya, Mumbai. |] |
| | |] |
| 2) | The Education Officer (Primary) |] |
| | Zilla Parishad, Solapur, Dist. Solapur. |] |
| | |] |
| 3) | The Chief Accountant and Finance Officer |] |
| | Solapur, Zilla Parishad Solapur Dist Solapur. |] |
| | |] |
| 4) | The Block Development Officer, |] |
| | Karmala Panchayat Samit, |] |
| | Tal – Karmala, Dist. - Solapur. |] |

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...Respondents.
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**Date : November 21, 2025.**

**1. Rule.** Rule made returnable forthwith. Heard finally by consent of parties.

**3.** All the Petitioners are permanent teachers superannuated from various schools run by Zilla Parishad, Solapur. The Petitioners had to pass MS-CIT examination while they were in service. It is not disputed that Petitioners were under mandate to qualify the MS-CIT examination while they were in service. Their pay-scales were revised

on condition to clear the MS-CIT examination within time. Although pay-scales of the Petitioners were revised, they failed to clear the MS-CIT examination within time.

4. The Petitioners further contend that the Respondent No.3 approved the retirement benefits/pensionary benefits to the Petitioners, however after deducting amount on account of not passing the MS-CIT examination within given time. The amount so deducted was the difference between the revised pay-scale and the pay-scale that Petitioners were receiving. The Petitioners would submit that recovery from the pensionary benefits/retirement benefits under the heading of excess or wrongful grant of monetary benefit is perfectly within the teeth of view taken by this Court at Aurangabad Bench in Writ Petition No.3320 of 2023 with connected matters vide its judgment and order dated 23<sup>rd</sup> March 2023. The Petitioners would submit that considering the fact that Petitioners have been superannuated, recovery was not at all justified.

5. Ms. B. R. Mangle, learned Counsel for the Petitioners would submit that it is now trite law that any amount that was erroneously or wrongly paid to an employee cannot be recovered from an superannuated employee. Ms. Mangle, for that purpose would place reliance on another order passed by this Court in Writ Petition No.5806 of 2018 at Nagpur Bench on 2<sup>nd</sup> March 2020. As such, the

Petitioners would submit that recovery that has been carried out of their retirement benefit, be held as illegal and the Respondent Authorities be directed to refund the recovered amount to them.

6. Mr. S. B. Kalel, learned AGP would, however submit that since the Petitioners did not clear the MS-CIT examination within the stipulated period, the said authority at the relevant time was perfectly justified in making recovery from the Petitioners. However, respective counsels in the light of cited orders would submit to pass appropriate orders.

7. We have heard at length Ms. Mangle, learned Counsel for the Petitioners, who appeared through video conferencing mode.

8. It is not disputed that all the Petitioners have been superannuated as Assistant Teachers. It is also undisputed fact that the Petitioners could not clear the MS-CIT examination within given time, and the recovery has already been carried out.

9. It is pertinent to note that recovery has been conducted after the Petitioners have superannuated. It is not the case of the Respondent authorities that any of the Petitioners have defrauded the State Authorities or created any record to defraud the State Authorities with an ill object to make any wrongful gains. It is also pertinent to note that it is not the case of any of the Respondent Authorities that any undertaking has been executed by the Petitioners to seek escalation / revision in their pay-scales.

10. While this Court had an occasion to visit a similar grievance raised by the Petitioners in Writ Petition No. 3320 of 2023 at Aurangabad, this Court at paragraph Nos.4 to 7 of the judgment and order observed as follows:

"4. We have considered the strenuous submissions of the learned advocates. It is, however, undisputed that none of these Petitioners had played any fraud or were personally involved in wrongful revision of their pay scales or orchestrating wrongful revision by manipulating the record. There is no allegation of fraud or deceit against any of them. No undertaking was acquired from them as and when the revised pay scale become payable. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it in these coercive circumstances, that undertaking were extracted from some of them.

5. The learned Advocate representing the Zilla Parishad as well as the learned A.G.P., submit that once an undertaking is executed, the case of the Petitioners would be covered by the law laid down by the Hon'ble Supreme Court in High Court of Punjab and Haryana and others vs. Jagdev Singh, 2016 AIR (SCW) 3523. Reliance is placed on the judgment delivered by this Court on 1.9.2021, in writ petition No. 13262 of 2018 filed by Ananda Vikram Baviskar Vs. State of Maharashtra and others.

6. We have referred to the law laid down by the Hon'ble Supreme Court in High Court of Punjab and Haryana and others vs. Jagdev Singh (supra). However, the record reveals that no undertaking was taken from these Petitioners when the pay scales were revised. The undertakings from some of them were taken at the stroke of their retirement. An undertaking has to be taken from the candidate on the day the revised pay scale is made applicable to him and the payment commences. At the stroke of superannuation of the said employee, asking him to tender an undertaking, practically amounts to an afterthought on the part of the employer and a mode of compelling the candidate to execute an undertaking since they are apprehensive that their retiral benefits would not be released until such undertaking is executed. Such an undertaking will not have the same sanctity of an undertaking executed when the payment of revised pay scale had commenced. We, therefore, respectfully conclude that the view taken in High Court of Punjab and Haryana and others vs. Jagdev Singh (supra), would not be applicable to the case of these Petitioners, more so since the recovery is initiated after their superannuation.

7. Taking into account that these Petitioners were not involved in any mischief, fraud or deceit in orchestrating their wrongful pay revision, the law laid down by the Hon'ble Supreme Court in Syed Abdul Qadir vs. State of Bihar and others, 2009 (3) SCC 475 and State of Punjab and other vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334 = AIR 2015 SC 696, would apply to these cases."

11. We place our hands on the landmark judgment rendered by the Hon. Supreme Court in the case of of ***State of Punjab and ors. Vs. Rafiq Masih (White Washer)***<sup>1</sup>. While dealing with the issue of recovery to be caused from the employees, the Hon. Supreme Court has laid down certain parameters as to the recovery of any amount wrongfully/erroneously paid to an employee.

12. For the sake of convenience, we to refer to the observations made by this Court in its judgment and order dated 2<sup>nd</sup> March 2020 in Writ Petition No. 5806 of 2018 (Nagpur Bench). Relevant portion is reproduced as follows :

"3. The petitioner joined the services as Assistant Teacher on 05.12.1983. During the course of his employment, the petitioner was promoted to the post of Headmaster on 01.01.2009 and continued to hold the said post till he opted for voluntary retirement on 03.01.2017. It is the petitioner's case that in view of the decision of the Hon'ble Supreme Court in the case of State of Punjab & Others Versus Rafiq Masih (White Washer) & Others [(2015) 4 SCC 334], recovery of excess payment would be impermissible in law. Moreover, the petitioner has relied on the decision on this Court in Ujwala Rupchand Thakre Versus Divisional Controller, Maharashtra State Road Transport Corporation & Another [2016(2) All MR 917].

4. Shri Kiran Malokar, learned counsel for the respondent nos.2 and 3 submits that in the present case the recovery of an amount of Rs.1,38,319/- has already been made and therefore the said decision would not apply to the facts of the case. We are unable to accede said submission since the Hon'ble Supreme Court has not precluded from getting refund of the amount recovered. Once the recovery is held to be bad in law, then in consequence refund is bound to happen. Besides that respondent relied on Government Resolution dated 20.11.2018 by which requirement of passing MS-CIT examination was stayed.

5. The Hon'ble Supreme Court in **Rafiq Masih's** case (supra) dealt the issue exhaustively. The Court has summarized five contingencies in which recovery by the employers would be impermissible in law. The relevant portion (paragraph 18) is reproduced hereinbelow:-

"18.....

(i) Recovery from the employees belonging to Class-III and Class-IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year of the order of recovery.

(iii) Recovery from the employees when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion that recovery if made from the employee would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

6. It can thus be seen from the Clause (ii) of aforesaid paragraph 18 that the recovery from the retired employees or the employees who are due to retire within one year of the order of recovery is not permissible. In the present case, undisputedly after a period of seven month from the date of retirement of the petitioner the recovery was sought and recovered. In view of above decision whole action of recovery after retirement is bad in law. In view of that, we set aside impugned action of recovery by allowing this writ petition. The respondent no.2- Zilla Parishad, Akola is directed to refund the recovered amount of Rs.1,38,319/- to the petitioner within a period of twelve weeks from today, failing which the amount will carry interest at the rate of 9% per annum till the realization of the amount in question.

**13.** We find that the Petitioners are not blamed of having defrauded the respondent authorities, nor there was any false assurance that was tendered by them at any point of time. Although the pay scale was

revised, failure on the part of the Petitioners to clear the MH-CIT course within time won't attribute any fraud against the Petitioners. In view of the law laid down in **Rafiq Massih** (supra) case, the recovery can not be justified in the given set of facts.

**14.** In view of the above, we are in full agreement with the view taken by this Court in Writ Petition No. 3320 of 2023 with connected matters (at Aurangabad Bench) and in Writ Petition No. 5806 of 2018 (at Nagpur Bench), as cited supra.

**15.** As such, Petitions deserve to be allowed and directions need to be given to the Respondent Authorities to refund the recovered amounts to the respective Petitioners within 90 days from today.

**16.** Hence, the following order :

- (i) Writ Petitions stand allowed
- (ii) The Respondent No.2–Education Officer (Primary) Zilla Parishad, Solapur is directed to refund the respective amounts to each of the Petitioners that was recovered from him/her for not clearing the MS-CIT examination within 90 days w.e.f. receipt of this Order's copy.
- (iii) Rule is made absolute in above terms.
- (iv) No order as to costs.

**[Ajit B. Kadethankar, J.]**

**[M. S. Karnik, J.]**