



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6451 OF 2025

Arif Ahmed Khaliluddin Shaikh ..Petitioner
vs.
The State of Maharashtra and ors. ..Respondents

Mr. Laxman Shivajirao Deshmukh, for the Petitioner.
Ms. Rupali Shinde, AGP, for Respondent Nos.1 to 4-State.

**CORAM : M. S. KARNIK &
N. R. BORKAR, JJ.**

DATE : 13th JUNE, 2025

ORAL JUDGMENT (Per M. S. Karnik, J.) :

- 1.** Heard learned counsel for the Petitioner and learned AGP for the Respondents.
- 2.** The challenge in this Petition is to the judgment and order dated 19th March 2025 passed by the Maharashtra Administrative Tribunal ("the Tribunal" for short) in Original Application No.953 of 2022.
- 3.** The Petitioner approached the Tribunal seeking direction to the State Government to withdraw the order dated 26th August 2022 and permanently restrain them

from making any recovery from the Petitioner. The Tribunal by the impugned judgment and order dismissed the original application.

4. The facts of the case in brief are as under :-

The Petitioner was appointed as a Constable on 19th March 2000. Rule 3 of the Maharashtra Government Servants (Other Than Judicial Department Servants) Marathi Language Examination Rules, 1987 ("the said Rules of 1987" for short) stipulates that the Government servant shall pass Lower Standard and Higher Standard examination before expiry of two years after his appointment. However, the Petitioner did not pass within the stipulated period.

5. The Petitioner passed the Lower Standard Language Examination on 16th July 2017 and the Higher Standard Examination on 8th January 2018. Rule 5 of the said Rules of 1987 provides the consequence of failure to pass such examination within stipulated period i.e. withholding of increments until the concerned Government servant passes the said examinations. The Petitioner was however granted

the increments which the State Government should have withheld as a result of the Petitioner's not having passed the examinations.

6. The Respondent No.4 vide a communication dated 26th August 2022 initiated the recovery of Rs.9,29,789/- against the Petitioner on the ground that the excess amount has been paid to the Petitioner to which he was not entitled.

7. The Petitioner approached the Tribunal. The Tribunal dismissed the original application holding that the principles enunciated in **State of Punjab and others vs. Rafiq Masih (White Washer) and others**¹ do not apply to the Petitioner's case.

8. Assailing the order passed by the Tribunal learned counsel for the Petitioner submitted that though the Petitioner did not pass the said examinations within the stipulated period of two years, no action was taken by the authority as contemplated under Rule 5 of the said Rules of 1987 till 2022. The Respondent authority granted yearly increments to the Petitioner and the salary was accordingly

¹ (2015) 4 SCC 334

paid. It is submitted that the Petitioner had not made any misrepresentation or committed any fraud. In such circumstances it is submitted that the Tribunal was not justified in dismissing the original application.

9. Learned AGP on the other hand vehemently opposed the Petition. Learned AGP placed heavy reliance on the affidavit-in-reply filed before the Tribunal and invited our attention to the findings of the Tribunal in support of her submissions. Supporting the findings recorded by the Tribunal it is submitted that the Tribunal has correctly distinguished the decision in *State of Punjab and others vs. Rafiq Masih (White Washer) and others* (supra) and by relying upon the decision of this Court in **Kiran Kirit Solanki vs. State of Maharashtra and others**² held that the Petitioner is not entitled to any relief. It is submitted that the Respondent authority is justified in recovering the excess amount paid.

10. In *State of Punjab and others vs. Rafiq Masih (White Washer) and others* (supra) the circumstances under which the State Government would not be justified in

² Writ Petition No.7929 of 2019 dated 19.07.2019

recovering the amount have been spelt out. The same reads thus :-

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

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

(iii) Recovery from 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.”

11. Admittedly, the Petitioner failed to pass the Marathi Language Examination within the time stipulated by Rule 3 of the said Rules of 1987. As a consequence thereof the Petitioner's increments were liable to be withheld however, the same were released. It is not the case of the Respondents that the Petitioner had made a representation that he should be granted the yearly increments. It is further not a case that there was any material suppression

on the part of the Petitioner. This is a case where the increments were inadvertently released by the Respondents to the Petitioner though he did not pass the Marathi Language Examination. The fact however remains that at a later stage the Petitioner did pass the examination. The Petitioner passed the Higher Standard Examination in 2018. The Petitioner is a Class III employee working with the State Government. There is absolutely no fault on the part of the Petitioner while accepting the said excess amount. There is nothing to indicate that the Petitioner was aware that he was paid the excess amount to which he is not entitled. Further, this is not a case that the Petitioner had filed any undertaking while receiving the salary that he would have to refund any amount if it is found to be paid in excess. In our opinion, it would be unjust, arbitrary and harsh if the excess amount of Rs.9,29,789/- is recovered from the Petitioner in the manner that is sought to be done at this stage at such a late juncture.

12. We have perused the order of the Tribunal. The Tribunal has while relying on the decision in *Kiran Kirit*

Solanki (supra) concluded that the benefits of ratio laid down in the case of *State of Punjab and others vs. Rafiq Masih (White Washer) and others* (supra) could not be extended to the Petitioner. The Tribunal also noted in paragraph 12 that there were divergent views of two Coordinate Benches of the Bombay High Court and preferred to follow the decision in *Kiran Kirit Solanki* (supra).

13. In our opinion, the action on the part of the Respondents to recover the excess amount would be harsh and iniquitous to such an extent, that it would far outweigh the equitable balance of employees right to recover. The recovery is highly belated. The case of the Petitioner is squarely covered by Clause (i) and (iii) of the parameters laid down in *State of Punjab and others vs. Rafiq Masih (White Washer) and others* (supra). The Tribunal fell in error in distinguishing the decision in *State of Punjab and others vs. Rafiq Masih (White Washer) and others* (supra), as in our opinion, the present case is squarely covered by the said decision.

14. The Writ Petition is accordingly allowed. The impugned judgment and order dated 19th March 2025 is quashed and set aside. Consequently, the Original Application No.953 of 2022 is allowed and the order of recovery is quashed and set aside.

(N. R. BORKAR, J.)

(M. S. KARNIK, J.)