

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

WRIT PETITION NO. 5324 OF 2025

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Shri. Krishna Ganpati Kesarkar
Aged : 60 years, Occ. : Retired
Residing at Room No. E-1/11/A-1,
Sai Krupa Owners Association,
Sector-10, Nerul, Navi Mumbai.

....Petitioner

Versus

1. The State of Maharashtra
through its Secretary,
Skill Development and
Entrepreneurship Department
Mantralaya, Mumbai-400 032.
2. District Vocational Education
and Training Officer, Mumbai
Suburban District, having its
Office at Opp. Khandoba
Temple, Balasaheb Thakurwadi
Mithagar Road, Mulund (East),
Mumbai – 400 081.
3. Deputy Director,
Vocational Education and
Training Regional office,
Mumbai having its office at
Mulund, New Building (COE),
4th Floor, Balasaheb Thakurwadi
Mithagar Road, Mulund (East),
Mumbai – 400 081.
4. Swami Vivekanand Jr. College
Hindi Medium Through its
Tulsi Technical Institute Bldg.,
78, Sindhi Society, Chembur,
Mumbai – 400 071.

....Respondents

Mr. Chintamani K. Bhangoji a/w. Advocate V. A. Madane, for
Petitioner
Ms. D. S. Deshmukh, AGP for State/Respondents.

**CORAM : RAVINDRA V. GHUGE &
ABHAY J. MANTRI, JJ.
DATE : 22nd JANUARY, 2026**

FINAL ORDER (PER : RAVINDRA V. GHUGE, J.)

1. We have considered the submissions of the learned
Advocates for the respective sides. Since Respondent No. 4 is a
formal party, we do not find any reason to issue notice.

2. The Petitioner was appointed as an Instructor (Building
Maintenance) with Respondent No. 3, on 01.08.1991. He was
granted approval, initially on 06.01.1992 and for the succeeding
academic years till 1993.

3. The Deputy Director, while responding to the proposal
dated 10.03.1993, issued a communication on 26.04.1994, relaxing
the condition of Craftsman Training Institute (CTI). Consequently,
approval to the appointment of the Petitioner was granted with
effect from 01.08.1991. The Petitioner superannuated on

30.04.2023.

4. On 16.06.2023, Respondent No. 3 passed an order altering the date of regularization of the Petitioner's service to 01.09.1993. Such a change was made after a lapse of 30 years, post retirement. Further, by communication dated 16.10.2023, Respondent No. 2 directed Respondent No. 3 to recover an excess amount of Rs. 4,11,054/- paid to the Petitioner, due to wrong pay fixation.

5. The Petitioner approached the Maharashtra Administrative Tribunal, Mumbai, by preferring Original Application No. 1404 of 2024, on 26.02.2025. The Respondent State raised an objection regarding the maintainability of the Original Application. Therefore, the Petitioner withdrew the Original Application and approached this Court.

6. By now, it is well settled, in the light of the Judgments delivered 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 others vs. Rafiq Masih (White Washer)* (2015) 4 SCC 334, that

excess payments made decades ago should not be recovered from employees belonging to Class-III or Class-IV categories, and more so, when they are on the verge of the retirement. In the present case, the Petitioner had already retired on 30.04.2023 and thereafter, the order of recovery was passed on 16.10.2023.

7. Notwithstanding the vehement submissions of the learned AGP opposing the Petition and praying for its dismissal, we find that there is no such factor that deserves to be considered in view of the settled position of law, as against the recovery. However, if the State has committed any mistake in the pay fixation and has noticed the same, though belatedly, the said mistake can be rectified now instead of perpetuating the same.

8. In view of the above, **this Petition is partly allowed.** The recovery of Rs. 4,11,054/- is quashed and set aside. However, if Respondent No. 2 has noticed any discrepancy in the proper calculation of the pay fixation/increment mistakenly paid to the Petitioner, we permit the said authority to issue a Show Cause Notice calling upon the Petitioner for a hearing. If the mistake is confirmed on verification, the said mistake can be rectified

prospectively and accordingly, the pension amount would be recalculated by recalculating the last drawn salary of the Petitioner.

9. Needless to state, any outstanding payments due to the Petitioner up to the date of the passing of this order, or if any amount is recovered from him, the same shall be paid to him within a period of 60 days.

(ABHAY J. MANTRI, J.)

(RAVINDRA V. GHUGE, J.)