

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1370 OF 2024

Sulbha Kulkarni

Age - 57 years

Having residence at-Judes Apts.

2nd floor, 201, Near Rahul Nagar,

WIMCO CHS, B cabin Road,

Ambarnath (East), Thane-421501

... Petitioner

V E R S U S

1. The State of Maharashtra
Social Justice & Special Assistance
Department.
Through the Secretary
Having office at Maharashtra State
3 Church Road, Pune – 411001.
2. Regional Deputy Commissioner
Social Justice & Special Assistance
Department
Having office at-1st Floor, Annex Building
Mantralay, Madam Cama Road
Hutatma Rajguru Chowk,
Nariman Point, Mumbai 400032.
3. Assistant Commissioner
Social Justice & Special Assistance
Department
Having office at-1st Floor, Annex Building,
Mantralay, Madam Cama Road,
Hutatma Rajguru Chowk,
Nariman Point, Mumbai- 400032.

4. Nirmala Niketan Institute
Through the Secretary
Having office-Nirmala Niketan
38, New Marine Lines,
Mumbai 400020.

5. College of Social Work
Nirmala Niketan
Through the Principal
Having office-Nirmala Niketan
38, New Marine Lines,
Mumbai 400020.

6. The State of Maharashtra
Higher and Technical
Education Department
Through the Principal Secretary
Having office at
Mantralaya Mumbai.

...Respondents

**WITH
WRIT PETITION NO. 1368 OF 2024**

Pralhad Ade
Age : 58 years,
Having residence at – C/o. Dinesh
Kumar, 2A/504 Sai Sankul Anex
Sai Chowk. Khadakpada
Kalyan West – 421301.

....Petitioner

V E R S U S

1. The State of Maharashtra
Social Justice & Special Assistance
Department.
Through the Secretary

Having office at Maharashtra State
3 Church Road, Pune – 411001.

2. Regional Deputy Commissioner
Social Justice & Special Assistance
Department
Having office at-1st Floor, Annex Building
Mantralay, Madam Cama Road
Hutatma Rajguru Chowk,
Nariman Point, Mumbai 400032.

3. Assistant Commissioner
Social Justice & Special Assistance
Department
Having office at-1st Floor, Annex Building,
Mantralay, Madam Cama Road,
Hutatma Rajguru Chowk,
Nariman Point, Mumbai- 400032.

4. Nirmala Niketan Institute
Through the Secretary
Having office-Nirmala Niketan
38, New Marine Lines,
Mumbai 400020.

5. College of Social Work
Nirmala Niketan
Through the Principal
Having office-Nirmala Niketan
38, New Marine Lines,
Mumbai 400020.

6. The State of Maharashtra
Higher and Technical
Education Department
Through the Principal Secretary
Having office at
Mantralaya Mumbai.

...Respondents

Mr. Mihir Desai (Senior Advocate) i/b. Ms. Devyani Kulkarni, for Petitioners.

Mr. Vikrant Parshurami – AGP for the State.

Mr. Manish Upadhye – AGP for the State.

Mr. Vijay P. Vaidya a/w. Mr. Mahendra Agvekar a/w. Ms. Shraddha Chavan, for Respondent Nos. 4 & 5.

**CORAM : RAVINDRA V. GHUGE &
ABHAY J. MANTRI, JJ.**

DATE : 26th MARCH, 2026

ORAL JUDGMENT (PER : RAVINDRA V. GHUGE, J.) :-

1. **Rule.** Rule made returnable forthwith and heard finally by the consent of the parties.

2. We have considered the submissions of the learned Senior Advocates / Advocates and perused the Petition paper-book with their assistance. We find that the issue regarding the recovery of payments made inadvertently to the Petitioners, has been put to rest by the Affidavit-in-Reply filed by the Joint Director of Higher Education, Mumbai Region, Mumbai, wherein it is set out in paragraph No. 10 as follows :

10. I say that the excess amount of salary which has been paid to the Petitioner may not be possible to recover after a gap of so many years, certainly, while granting post-retirement benefits, the Petitioners' actual post of library Assistant needs to be taken into consideration and not the assistant librarian for which he was getting a salary for such a long period on the Respondent college sending required proposal to the Respondent State.

3. In view of the above, and considering 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 others vs. Rafiq Masih (White Washer)*, AIR (2015) SC 696, recovery of amounts inadvertently paid in excess, for a long time, is impermissible after the superannuation of an employee. These two Petitions, therefore, succeed to that extent.

4. However, the issue that needs to be decided is whether, the concerned authorities who committed a mistake in wrongly calculating the pay fixation and inadvertently made excess payments, have the right to correct their mistake later on.

5. The learned Advocate representing the State Authorities submits that the authorities cannot be made to suffer on account of

an inadvertent mistake that may have been committed. The principle that ‘once a mistake, always a mistake’ is not applicable in such cases.

6. This Court has taken a consistent view that though excess payments made inadvertently in the past cannot be recovered after the employee has superannuated, if the pay fixation has been wrongly made and the mistake is subsequently noticed, the authorities must initiate a hearing in the matter, grant a reasonable opportunity of hearing to the employees, and, upon considering the record, pass an order re-fixing the pay scale in order to rectify the mistake committed in the past. By rectifying such mistake, the pay scale can be fixed strictly in accordance with the eligibility of the Petitioners, and further payments can be made in future on the basis of the correct pay fixation.

7. In view of the above, **these Petitions are partly allowed**. The impugned action of recovery is quashed and set aside with the following directions :-

a) Respondent No. 6 shall issue individual notices to all

these Petitioners, giving them at least 15 days' clear notice for appearing before the said authority and participating in the hearing for pay fixation.

- b) The notices shall be issued to the Petitioners on their e-mail addresses.
- c) The parties shall correspond through e-mail for ease of communication.
- d) After the hearing is concluded, Respondent No. 6 shall arrive at proper pay fixation within a period of 60 days from the date of the first hearing in the matter. Such order shall be served upon the Petitioners as well as the Management on their e-mail addresses, within 24 hours of the passing of the order by Respondent No. 6.
- e) Pension shall be recalculated on the basis of the pay fixation freshly carried out, and payment of pension shall accordingly commence. After the pay fixation is carried out, the Management shall extend cooperation in

submitting the revised pension proposal without delay.

- f) Notwithstanding the payment of pension as per the revised pay fixation, the aggrieved parties are at liberty to seek redressal of their grievance, if they desire to challenge the order passed by Respondent No. 6, by availing of such remedy as is permissible in law.

8. **Rule is made partly absolute in the above terms.**

(ABHAY J. MANTRI, J.)

(RAVINDRA V. GHUGE, J.)