

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 5094 of 2020**  
**With**  
**CIVIL APPLICATION (FOR ORDERS) NO. 3 of 2024**  
**In**  
**R/SPECIAL CIVIL APPLICATION NO. 5094 of 2020**

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ANITABEN MANUBHAI KAKANI  
Versus  
STATE OF GUJARAT & ORS.

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**Appearance:**

MR NIRAV R MISHRA(6140) for the Petitioner(s) No. 1  
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the  
Respondent(s) No. 1  
MR C P CHANIYARA(6836) for the Respondent(s) No. 3,4  
MR. DINESH N TRIVEDI(6256) for the Respondent(s) No. 3,4  
NOTICE SERVED BY DS for the Respondent(s) No. 1,2

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**CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

**Date : 18/09/2024**

**ORAL ORDER**

**ORDER IN CIVIL APPLICATION NO. 3 OF 2024:**

1. Draft Amendment dated 12.09.2024 is taken on record. The same is allowed and directed to be carried-out forthwith.

2. Heard Mr. Nirav R. Mishra, learned advocate

appearing for the applicant and Mr. C.P. Chaniyara, learned advocate appearing for the respondent nos. 3 and 4.

3. It is the case of the applicant herein – original petitioner that by the impugned communication / order dated 30.08.2024, which is duly produced at Annexure-I, Pg-15 to the present application, the respondent no.5 has issued an order of recovery from the applicant herein to the tune of Rs.2,32,325/- on the ground that the applicant herein has given the excess payment for the year 2012-13 and the said amount is sought to be recovered by the impugned order. It is further directed that the applicant herein has to immediately pay the said amount and produce the receipt before the authority, failing which the same would be recovered by treating 100% cut from the salary of the applicant.

4. Mr. Nirav Mishra, learned advocate submits that the applicant herein is a Class-III employee. The service condition of the applicant herein is protected by orders passed from time to time in the main petition. Reliance is placed on the order dated 13.02.2024 in the present petition, which is duly produced at

page-32, wherein, by way of interim relief it is directed that till the final disposal of the main writ petition, the services of the present applicant shall not be disturbed without leave of the Court. On 20.06.2024, this Court reiterated and directed the respondent authorities to maintain the pay-band and salary payable to the petitioner-applicant, pending the present petition.

5. It is submitted that, in spite of the aforesaid orders passed from time to time, the respondent authorities overreached the process of law and issued the impugned communication dated 30.08.2024, without granting an opportunity of hearing to the applicant herein, whereby, applicant herein is adversely affected. Reliance is placed on the ratio laid down by the Hon'ble Apex Court in the case of ***State of Punjab & Ors. v/s. Rafiq Masih (White Washer) & Ors.***, reported in ***(2015) 4 SCC 334***. Reliance is placed on Para-12 of the said order, wherein, it is held that no recovery can be affected qua Class-III and Class-IV employees for the excess payment for a period of five years, before the order of recovery is issued.

6. Mr. C.P. Chaniyara, learned advocate appearing for

the respondent nos. 3 and 4 requests for time to take instructions and / or to file reply.

7. Considering the aforesaid contentions raised by Mr. Mishra, learned advocate appearing for the applicant herein, the said submissions prima-facie requires consideration and in view thereof, by way of interim relief, the impugned communication / order dated 30.08.2024, which is duly produced at Annexure-I, Pg-15 is directed to be stayed, till further orders.

Stand over to 16.10.2024.

**(VAIBHAVI D. NANAVATI,J)**

*Pradhyuman*